



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



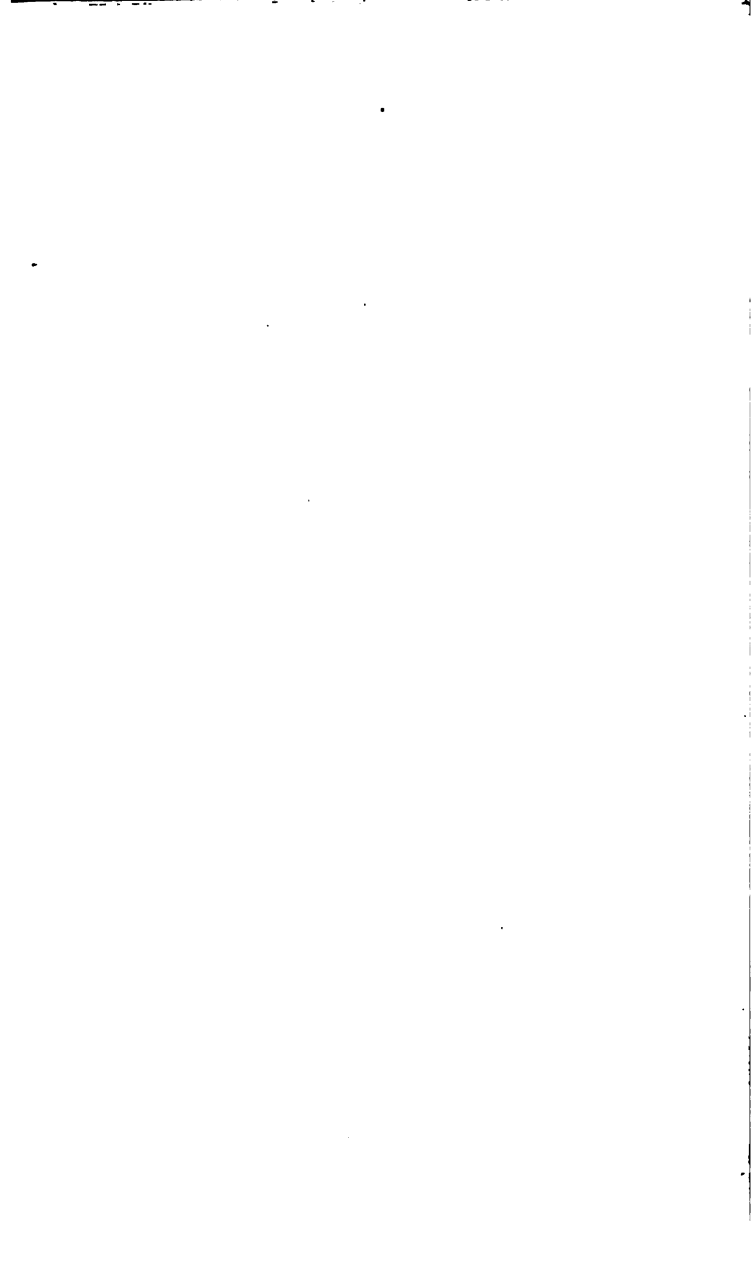
JPG

LLI

JRm



STANFORD LAW LIBRARY



THE

*17.11.11
March 53*
LAWS, CUSTOMS, AND PRIVILEGES,

AND

THEIR ADMINISTRATION,

IN THE

ISLAND OF JERSEY;

WITH

NOTICES OF GUERNSEY;

Also a Commentary on certain Abuses,

AND A

PETITION TO PARLIAMENT.

FOR A REFORM OF THE SAME.

!

BY ABRAHAM JONES LE CRAS,

EDITOR OF THE "NEWS" AND "PATRIOT" JOURNALS.

LONDON:

LONGMAN & CO., PATERNOSTER ROW, AND BUTTERWORTH,
FLEET STREET.

1839.

Journals. The articles having excited great interest, and it being known that it was my intention to leave the Island, many of my friends in Jersey and Guernsey, and also in England, who were aware that I had published only a part of my collection, were desirous of seeing the whole ; they therefore solicited me to publish them in a popular form, so that the public might not lose the benefit of my labours. Hence then a great part of the present volume is taken from my "Note Book," which will account for some of the articles being already familiar to the Jersey reader, but which will not be the less interesting to the British public, for whose especial use the work is published. Some of the *facts* set forth, will no doubt be startling, but they are nevertheless true, and I have endeavoured to avoid giving them any colouring, but have rather left them to speak for themselves, knowing that they cannot be called in question or denied.

It might be well for me to anticipate, that some persons will probably cast reflexions on the purity of my motives in publishing this work, and insinuate that I have been actuated either by pecuniary views on the one hand, or a wish to gratify an ill feeling towards certain persons, on the other. I therefore think it right to declare, that no individual whomsoever has been privy thereto, either directly or indirectly, and that it has not been produced by a sudden ebullition, arising from any recent circumstances, but purely for the purpose of exhibiting to the world the scandalous nature of the laws, particularly of Jersey, and the wretched manner in which they are administered ; in the fervent hope, that it will provoke enquiry, and be the means of causing such abuses as shall be proved to exist, to be forthwith reformed.

The laws have hitherto been unknown to the public, because they have been confined to the breasts of the *Jurats*, who exercise an almost absolute despotism, pretending to govern their decisions by their consciences, and which being elastic, they are enabled to cover every species of fraud, swindling, and crime, that the ingenuity of man can devise, or his wickedness commit. The Island being an exempt jurisdiction, they possess the power of restraining the execution of certain Writs issuing from the Courts of Westminster, suspending Orders in Council, and also usurp that of nullifying Acts of the Imperial Legislature ; by which, they place

themselves beyond the controul of all ordinary means ; so that nothing but the interposition of Parliament with the Crown, can possibly remedy it. This then is the reason why the subjoined Petition has been prepared to be presented to both houses of the Legislature.

To conclude, I beg to observe, that there is one subject, paramount to all others, which shows the ill working of this exempt jurisdiction in a strong light, and which will be an instructive lesson to refugee debtors and criminals. Now in order that this might be well understood, I shall be very explicit. I have shown under the head "Jurisdiction of the Jersey Court," (pp. 29 and 30) how the constitutions of King John were invaded, by which the Court usurped a cognizance over civil contracts, that originate out of the Bailiwick, leaving untouched only crimes and misdemeanours ; and I now purpose to show the evil consequences that have resulted from it. In the first place let me speak of refugee-debtors. These for want of understanding the peculiar difference betwixt the *practice* of the Law in Jersey and Guernsey, by taking shelter in the former instead of the latter, actually jump out of the pot into the fire, when they leave their own country for this Island, because *here*, they are liable to be arrested immediately they land, for *any* debt, large or small, of *any* kind, wherever contracted, and under whatever circumstances ; without oath or affirmation being made that the debt is justly due, and without the necessity of the creditor following his debtor ; whereas, in Guernsey, they are privileged until they have acquired a legal domicile there, by a continued residence of a year and a day, excepting it be for Bills of Exchange, &c., and even then, they cannot be arrested for debts under £5, nor without oath being previously made of the justness of the demand. The only privilege which Jersey offers in common with Guernsey, is that of *protection to criminals*. The debtor being supposed to bring something with him, those who administer the laws share it, by making him conform to their jurisdiction, but a criminal is exempted from every restraint ! The greatest cruelty exercised towards refugee-debtors is, that whilst perhaps the bulk of their property might be under the jurisdiction of the laws of their own country, their persons become subject to another ; and that they are precluded from bringing any evidence to bear, from the other side of the channel, even should the debt have been sa-



INTRODUCTION.

My connexion with the public Press for a period of nearly ten years, during which I edited two weekly Journals, whose columns were chiefly devoted to the localities of the Island, and in which the proceedings of the Legislature and Court of Justice, formed a leading feature, enables me, perhaps, without much ostentation, to lay claim to some knowledge of the laws, customs and privileges of the country, and to form a tolerably correct judgment of the manner in which they are administered. These matters have, with me, been the subject of very considerable research. I have had some of the most valuable manuscripts in the Island at my disposal, to collect materials from, as well as the Code of Laws, sundry Orders in Council, Acts of the States, judgments of the Court, &c., which I have translated into the English language, and to these I may add, numerous Acts of Parliament, that apply to the Island, and decisions of English Courts, on points of foreign and international law ; all of which are now brought together in a popular form, with occasional remarks. I have made the matter thus varied, in order that this Book should be the more serviceable, for I found it necessary to explain the English laws which bear on the Island, to the Jersey reader, as well as the Jersey laws to the English reader ; and having made the former my study as well as the latter, I have endeavoured to point out their difference, so as to simplify a comprehension of both in their relative bearings.

In prosecuting my editorial labours, I was accustomed to collect laws and decisions, as facts and data, on which I made notes, and kept them in reserve, to use as opportunities should offer or circumstances require. In course of time, these notes became so numerous, that on referring to them, to satisfy enquiries on given points, it was repeatedly suggested to me, that I should confer a great service on the public, if I would occasionally publish a column or so, and which I did many weeks following, in the News and Patriot

6. That the regulations for conducting the meetings of the said States, present grievous impediments to the dispatch of public business, inasmuch as they seldom meet, and when they do, it is only for a few hours, and oftentimes, without being enabled to form a house, in consequence of the non-attendance of members.

7. That although an Order in Council, bearing date the 24th day of April, 1830, was issued to remedy the latter grievance, by inflicting a fine of two pounds sterling on those who should absent themselves without lawful excuse, yet the said fines have never been levied, but have been allowed to accumulate to a very large amount, the States having nullified the said Order, by refusing to register it on the public rolls.

8. That the union of the legislative and judicial functions in the same persons is found to be incompatible, and highly detrimental to the public service, because, whilst it impedes the progress of legislation in the States, it renders them unfit for the bench, inasmuch as it makes them political partizans and subject to local prejudices, as daily experience proves. And that the union of the constabulary with the legislative office, imposes numerous and burthensome duties to be performed by one person, which are also incompatible and prejudicial to the public service, because persons are elected as peace officers, who are not qualified by education and talents to be legislators for the country.

9. That the elective franchise is open to, and always polluted by, corrupt influence, owing to the immense power and authority vested in the Court, and the servile dependence of all classes upon them ; besides which, aliens, paupers, vagabonds and fugitives from Justice, exercise the rights of citizens.

10. That certain honours, places of trust and profit, and privileges in trade, are monopolised by persons who fortuitously were born in the Island, to the great prejudice of all others of Her Majesty's subjects, domiciled therein.

11. That in consequence of there being scarcely any written laws, and no disposition on the part of, or capacity in, the States of Jersey, to enact any, for permanent use, the customs and usages which had their origin in barbarous times are perpetuated, to the great injury of the people, and to the disgrace of this enlightened age.

12. That certain Ordinances and odious enactments, passed by the States, are not sent up for the Royal Assent, but are allowed to expire, through lapse of time, (three years,) and are then re-enacted, and this again and again, by which the States defraud the Crown of its prerogative, and perpetuate laws without its consent.

13. That this discretionary power of enacting laws, without the consent of the Crown, is not only calculated to undermine Her Majesty's royal authority in the said Island, and the rights and liberties of the people, but also perpetuates numerous frauds and abuses, and prevents the punishment of crime, to the great detriment of Her Majesty's loyal subjects.

14. That the Acts passed by the States, to prevent the exportation of foreign corn to England as Jersey produce, free of duty, were not sent up for the Royal Assent; in consequence of which, parties who were prosecuted for a breach of the same, were enabled to evade the penalties thereof, by summoning a witness who was absent from the Island, and who remained away until the law expired; by which trial was postponed from time to time, and the parties were eventually discharged, when there was no law upon which they could be convicted, as in the case of the Crown v. Anley.

15. That when the said Act expired, the States re-enacted it with some trifling alteration, but not having forwarded the same for the Royal Assent, it will expire on the 30th Aug., 1840, which temporary enactment is a breach of faith with your honourable house and the Government, inasmuch as it does not suppress those fraudulent exportations which were matter of complaint before your honourable house in the year 1835.

16. That Her Majesty in Council has also a legislative jurisdiction in the Island, and occasionally issues Orders in Council to improve the laws and their administration, which Orders are usually nullified either by the States or the Court refusing to enroll them, and without which they are held to have no force of law.

17. That numerous Acts, by the Legislative wisdom of Parliament, have from time to time, been extended to the Island, by being specially included in them, and yet when the said Acts have been transmitted, they have also usually been nullified by non-registration, or their force restrained by local ordinances.

18. That for want of an express enactment to determine what is necessary to render an Act of Parliament binding on the Island, and when its operation commences, Parliamentary legislation has hitherto been evaded, when found convenient, because it is held by the local authorities that not only must the Island be particularly named therein, but that the Act must be transmitted to them, accompanied by an Order in Council, commanding its observance; which Order must be ratified and registered in the public rolls to give it force of law; and that the omission of the former formality in England, or of the latter in Jersey, renders both the one and the other a dead letter, the Act having force only in virtue of the Order, and the Order having force only in virtue of the registration; hence that the suspension of the latter necessarily nullifies the former, and renders it of no effect whatever.

19. That this system of nullifying the laws, enacted by the supreme Legislature, is pregnant with the most alarming consequences, being calculated ultimately to sever the compact betwixt the Crown and its dependency—stabs the vitals of constitutional government, renders the law uncertain, and places the lives, liberties, and properties, of the people connected with it, in imminent jeopardy.

20. That the said States of Jersey have also for many years, usurped the prerogative of naturalizing aliens, without the consent of the Crown; and have thereby induced great numbers of Frenchmen and other foreigners, to purchase landed property in the Island, upon the faith of their being thus made British subjects, by Acts which have never received the Royal Assent, but have expired through lapse of time.

21. That the only Court of Justice in the Island is composed of the Bailiff, appointed by letters patent from the Crown, and twelve Jurats, elected by the people, from among the farmers, shop-keepers, and merchants, and without any regard to their previous qualifications; having cognizance of all causes, civil, criminal and mixt, arising within the Island, treason only excepted, and is immediately dependant on the Privy Council, by appeal or doleance, which is a tardy and expensive means of obtaining justice.

22. That neither the Bailiff nor the Jurats are sufficiently qualified for the responsible situations they hold, and being members of the local legislature for life, thus exercising political as well as judicial functions, and residing within a juris-

diction of small extent, are in constant communication with the inhabitants, and subject to local prejudices ; and having scarcely any written laws to govern their decisions, the lives, liberties, and properties of the people are almost at their absolute disposal, which renders the former despotic, and the latter mere slaves.

23. That these prejudices are so notorious, and the latitude allowed them so great, some of those who have the conducting of legal matters, get the Jurats packed for certain causes, so as to ensure a judgment in favour of their clients, by which the form of a trial is become a farce.

24. That this system of packing the Jurats is adopted in all causes of importance, for although by the customs of the Island they are required to sit in turn to hear causes, yet certain of these Magistrates sit day after day, by which others are virtually excluded, and which has been recently made a matter of complaint to Her Majesty's Government, in the case of *Le Breton v. Ennis*, but without any redress.

25. That the Bailiff and Jurats are so notoriously unqualified for their duties, that they frequently suspend their judgments, in order to consult a party on the framing of them, and alter and revoke them, after they have delivered them, as may be proved by numerous examples.

26. That the judgments of the Court are sometimes prepared before the trials are heard, as was the case in the prosecution of the Crown, at the instance of the late Lieutenant Governor, Major General Thornton v. *Le Breton*, Colonel of Militia, when one of the Jurats, after the pleadings were closed, produced a judgment already written, which was adopted by the Bailiff and Jurats, and rendered against the said Lieutenant Governor.

27. That their oath of office does not require them to give judgments according to evidence, but according to conscience, and that when a Jurat sits in the place of another, he shall govern his decision by the opinion of the absent Jurat, who does not hear the trial ; and that in all cases when the bench is divided in opinions, the minority shall conform to the majority, whether they approve of the judgment or not ; a striking example of which recently occurred in the case of *Godfray v. Romeril*, when two Jurats were compelled by the other Jurats to adjudge defendant to damages and costs,

when the full Court discharged him, on the ground that the offence was committed out of their jurisdiction.

37. That persons are seized and committed to prison for alleged crimes and misdemeanours, without oath or affirmation of the facts charged being previously made, and without a warrant, and are denied the benefit of the great constitutional remedy for false imprisonment, the Writ of Habeas Corpus, the Acts of Charles 2d, and George 3d, for protecting the liberty of the subject, in which the Islands are specially included, being held to have no force, in consequence of the local authorities having neglected to register them, in breach of the faith reposed in them by your honourable house, in the assurance given to you by the Government, through the Under Secretary of State, in 1832, that "the authorities of both Islands, though reluctantly, had consented to register the Habeas Corpus Acts."

38. That persons are seized for debt, even for so small an amount as a few shillings, without oath or affirmation being previously made, of the justness of the demand ; are denied facilities for procuring bail, but instantly incarcerated in dungeons, destitute of every convenience and comfort, and even at midnight, at the peril of their lives, where they can be detained at the suit of their creditors, on the miserable pittance of two pence three farthings per diem, for an unlimited period, as was the case with one Houbon, who was kept in actual custody for a period of five years and upwards, there being no law for the relief of Insolvent Debtors, but only for the adjudication of property to mortgagees.

39. That both person and property is attached to secure payment of debts before they are due, and that when they have been paid, or can be disproved, the Court does not possess the power of issuing process to compel the attendance of witnesses living out of the Island, or of issuing a commission to take evidence abroad, which operates greatly to the prejudice of strangers and others, whose debts were contracted out of the bailiwick.

40. That fraudulent attachment for debt is also practised to a great extent, and enables creditors living on the spot, to acquire an unjust preference over absentees, by levying an arrest on the effects of a debtor, and getting the same confirmed by the Court, and the effects sold before an officer of Justice, by which they obtain payment in full to the

exclusion of the English claimants, as was done at the demise of the late Mr. W. Davies, of the Musical Repository, when all his stock in trade, which had been supplied on credit by manufacturers and merchants in London, was arrested at the suit of his Jersey creditors, and sold before the officer of Justice for their benefit, by which they obtained payment in full, and the English creditors, whose claims amounted to nearly a thousand pounds, were excluded from all participation in the same.

41. That the adjudication of property by Décret operates most unjustly towards English creditors, who generally are the principal claimants in cases of bankruptcy, because it passes all the real and personal estate of the debtor to a judgment creditor, for the benefit of himself alone; subject only to his being liable to satisfy judgment debts of a prior date, by which the great body of creditors, living in England and elsewhere, whose claims are founded on simple contract, are excluded from all participation in the estate.

42. That by this system the Tenant under a Décret gets not only payment in full, but a large surplus, to the prejudice of other creditors, and that immense fortunes have been made by the lawyers and other attachés of the Court, who upon some small demand, usually get themselves declared Tenants, or purchase the interest of their clients and others, for that purpose.

43. That separation *quant aux biens*, (separation as to property,) betwixt husband and wife, is practised to a great extent, among all classes of the people, and that secret transfers of estate and effects, are made under cover of the same, to defraud creditors, to the great injury of English merchants and dealers. That many persons in trade are also placed under Curators or Guardians, and others appoint Procureurs général, by which they are exempt from all liability for the debts and contracts they subsequently enter into without the consent of the same; and that others place their affairs in the hands of Justice for a year and a day, to obtain time to arrange with their creditors, without sufficient notice being given to the public, and which is generally the means of preserving the property for the benefit of some judgment creditor, who shall be declared Tenant to the estate.

44. That the Benefice d'Inventaire is a process by which the heir at law, on the demise of an intestate, and before he

them to be remedied by other means. That you will pass a declaratory statute as to what shall render an Act of Parliament binding on the Island—that you will give the inhabitants a voice in the debates of your Honourable house, where laws are enacted for their government—that the English language be adopted, and the statute laws of England be extended to the island in all cases, save and except wherein there are written laws already provided, and such as concern the imposition of taxes—that the local legislature be reformed and its powers defined—that a greater number of representatives be returned, and that vote by ballot be established—that the Court be remodelled and an English barrister appointed president, of not less than seven years standing—that the Jurats be taken from the bar, and that the bar be thrown open to all qualified persons—that the jurisdiction be better defined both in civil and criminal cases—that the island be included in the Hampshire circuit and that the Judges of Assize do visit it twice a year, and cause a general goal delivery—that all civil causes of a certain value and capital cases be reserved for their cognizance—that the sheriffs be appointed annually and a paid police be established—that no arrest be made but by warrant—that imprisonment for debt be abolished—that trial by jury be adopted in civil as well as criminal cases—that evidence be taken *viva voce*, and that punishments be graduated according to crime—that the Jurats sit as Justices in Quarter sessions—that a Court of requests be established for the recovery of small debts*—that the Insolvent and Bankrupt Laws of England be extended, and such other remedies applied, as according to the wisdom of your honourable house shall appear fit and proper.—And your Petitioner as in duty bound will ever pray.

* For want of this, the petitioner has lost nearly £2,000, during his residence in this Island, party lawyers and political judges having virtually excluded him from obtaining his dues by course of law.

ERRATA—p. 392, line 5, instead of 1830, read 1839.

ISLAND OF JERSEY.

THE Island of Jersey, much the largest and finest of the Norman Isles, is, according to Mr. Brooke, 18 miles from the coast of Normandy, in France, and 84 south of Portland, in Dorsetshire. It is 30 miles in circumference, and difficult of access on account of the rocks, sands, and forts erected for its defence. At its N. W. is situated in N. latitude 49. 16' and in 2° 22' longitude, West of London. It forms the most southern Island, of the groupe which lies in St. Michael's Bay, on the coast of Lower Normandy and Brittany. That Gulf sweeps from *Cap de la Hogue* in the former province to *Cap de Frehelle* in the latter. The Island of Jersey was known to the Gauls, the Romans, the Franks, and the Normans, and from each it is probable received a name. The Romans knew it by that of *Cæsaria*, in the records of the Tower and Exchequer it stands *Jerseye*. The form of the Island is that of an irregular paralelogram. Its greatest length, from S. E. to N. W. is about twelve miles ; and the average breadth may be estimated at full five miles ; the width does not exceed seven miles. By a very accurate measurement, it contains a superficies of between thirty-nine and forty thousand acres, or sixty square miles.

The distance from Jersey to Carteret, or to Port Bail, which are the two nearest French ports, is only from 5 to 6 leagues ; to Guernsey, about 7 leagues ; to Alderney, about 10 leagues ; to Weymouth, about 25 leagues ; to the Isle of Wight 30 leagues ; and to Southampton about 40 leagues.

Jersey exhibits an inclined plane : part of its eastern coast, commencing at *Mont Orgueil*, and the whole of its northern shore, forms one continuous range of rocks, rising abruptly from the ocean, frequently to an elevation of from 40 to 50 feet. This natural defence renders the Island in those quarters nearly inaccessible. The rocks exteriorly are in general

mere naked ridges, projecting their sharp angles into the sea, thus adding to the rapidity of the currents and varying their courses. In several places the rocks are loosely blended with other terrene combinations, or are in a state of disintegration ; hence many deeply indented excavations have been formed by boisterous tides. From these rugged cliffs, the land declines towards the southern coast, which in several places is on a level with the sea. It is a very probable conjecture that many of the adjacent rocks were originally part of the Island itself. There is a legendary tradition, that this Island was once so contiguous to France, that persons passed over on a plank or a bridge, paying a small toll to the Abbey of *Coutance*. Several circumstances give a colour to the probability, that, the whole of *St. Michael's Bay*, from *Cap de la Hogue* to *Cap de Frehelle*, or the greater part of it was once dry ground, either forming a portion of the main land of France, or insulated.

Jersey, (the population of which at the last census was 86,582,) is divided into twelve parishes, which form a part of the See of Winchester, and the Governor for the time being is patron of all Church livings.

MILITARY AND CIVIL GOVERNMENT.

THE government of the Island is partly military and partly civil. The Legislative body or Civil government, consists of the Lieutenant-Governor, Bailiff, and twelve Jurats, the Rectors of the twelve parishes, the Constable of each parish, and the Attorney and Solicitor Generals ; this is the parliament of the Island : the military government, which is little more than for the protection of the Island from invasion, lies exclusively with the Governor or his Lieutenant. The Governor himself never resides here, but his Lieutenant does ; and if the latter should on any occasion, leave the Island, even for a few days, the senior military officer is immediately sworn in as Deputy-Governor for the time being, and has all the power of the actual Governor. The Lieut.-Governor being always a military man, has the command of all the regular troops and Island militia ; also of the several forts, castles, and places of defence. On suspicion of treason, with the consent of two Jurats, he can seize and imprison any subject of Her Majesty. In time of war, no inhabitant may go out of the Island, and no alien may sojourn or settle in it, without

his knowledge or permission. [See *Aliens and Foreigners*]. He is said in some cases where the interest of the crown is concerned, to have a seat and vote in the Royal Court, as well as in the States. On such occasions he wears an elegant red cloak, and is attended by a guard of honour; his seat is next to the Bailiff's, who being the Chief Magistrate has his seat raised above that of the Governor, in token of his independence. [See *Bailiff, his precedence*.] His Excellency however, seldom avails himself of this privilege; although former Lieutenant-Governors frequently did, and even voted in the election of civil officers. The guard of honour alluded to, consists of twelve sergeants, belonging to the regiment happening to be on duty, each bearing a lance or spear; and the red cloak worn by the Lieutenant-Governor is presumed to be in allusion to the old law maxim of "*cedant arma togæ*," and may do well in time of peace; but, in time of war, necessity sometimes requiring the power of the Military Governor to be supreme and even absolute, the opposite maxim must then prevail, "*silent loges inter arma*."

OFFICERS APPOINTED BY HER MAJESTY.

Governor.—The Right Honourable William Carr Beresford, Viscount Beresford, Baron of Albuera and Dungarvan, in the County of Waterford, G.C.B., G.C.H., Marquis of Campo Major, Earl of Francoso, General of her Majesty's Land Forces, and Colonel of the 16th Regiment of Foot.

Lieutenant Governor and Commander-in-Chief.—His Excellency Sir Edward Gibbs, K.C.B.

Bailiff.—Sir John De Veulle, Knt.

Dean.—The Very-Reverend Francis Jeune, D.C.L. Rector of St. Helier.

Viscount.—Matthew Gosset, Esq.

Attorney General.—Thos. Le Breton, Esq.

Solicitor General.—J. W. Dupré, Esq.

THE LEGISLATIVE POWER.

The ordinary legislative power is vested in the Queen and Council, though the local assembly is permitted to share in it. It is composed of three estates; Her Majesty, the Privy Council and the States, something like, though but a very faint image of, Queen, Lords, and Commons. The local

assembly is formed of three bodies, but yet it constitutes only one estate, and that of a very inferior kind ; inasmuch as it does not possess the rights usually belonging to Colonial and Provincial legislatures, and cannot by any means be compared to the British House of Commons, which is a coeval branch of the Imperial Parliament. The States of Jersey, being of a municipal character, are under many restraints : they do not like the Colonial Assemblies, where there is no legislative Council, possess the *sole* right of originating laws, nor have they, like the Commons of England, the exclusive power of initiating money bills, or any other enactment for the imposition of taxes ; but are actually restrained therefrom, until the the Royal permission has been first had and obtained. The legislative power of the States does not even extend to that of corporations in England, though they may be analogous in one respect. They can indeed both make by-laws, but those of the Jersey Common Council, are not in force beyond three years, whereas, those of bodies corporate in England are perpetual ; provided they are such as are coincident and co-operative with the laws of the realm, and they are invalid only when they contravene the statute and common Law. Such also is the condition of all Acts passed by the Jersey States. The sole power, which is truly legislative, for ordinary cases, resides, as it always has, in the Queen and Council. Whatever ordinances they make are valid, and whatever they repeal are no longer the law of Jersey ; and that without the least consultation, advice, concurrence, or assembling of the States. This is a remnant of that despotic power that belonged to the ancient princes of Normandy, whose WILL was the law, and whose people were slaves.

Let it, however, be understood, that *we* do not cherish this doctrine, but only lay it down, as the bearings and land marks of the constitution ; for however unpleasant it might be to some persons, we have reason to know, that it was the opinion of Mr. Le Geyt, the celebrated commentator on the laws of Jersey, and that it has been maintained by a no-less celebrated person—Mr. Brock, the present Bailiff of Guernsey.

It is true, that in modern times, attempts have been made to undermine that prerogative, by making the mandates of the Sovereign dependent on the concurrence of the local tribunals,

in registering or ratifying the same ; and by withholding those formalities, to defraud the crown of its rights, to make the supreme authority vest in the inferior, and clandestinely to put such laws, orders and regulations as they shall think fit at defiance. Hence Mr. Brock in his *younger* days, declared in his memorial to the House of Lords, in 1805, on behalf of the Islands of Jersey and Guernsey, against " an act for the more effectual prevention of smuggling," that " according to usage far beyond memory, the sole rights of the ancient duchy of Normandy, to be exercised by his Majesty in his most honorable Privy Council, by orders in due form to be transmitted to the Royal Courts of the said Islands, to be by them legally verified and registered, *after which, and not before, or otherwise,* such orders have the force of law in the said Islands, in conformity to the immemorial and invariable exercise of the prerogative of his Majesty, and his royal predecessors." Upon the faith of this dictum, numerous orders in Council have been rendered a dead letter. Leaving however this digression, we proceed with our subject.

The Islands originally formed part and parcel of the Duchy of Normandy, the Prince of which from Rolla, downwards, was an absolute law-giver. One of those Princes, William 2d, (the *bastard* of Robert), invaded England and conquered it, took possession of the whole property of it, changed the Saxon laws, converted the tenure into that of military service, and imposed whatever laws he pleased on that country also. He was thus Duke of Normandy and King of England at one and the same time. When the Duchy alienated itself from his dominion, the islands, remained true to their allegiance, fixed to the soil, dependent on his caprice, and were for a long period ruled by his edicts as Duke. But in progress of time, as the Barons of England, to whom the lands were granted for their military exploits, became refractory, they wrested from him and his successors, and after them their dependents, the people likewise, certain portions of that power, and pared it down to a decent standard, by which the people of England acquired the rights they now possess—and it was thus, that the Parliament had its origin. It must be observed, that the inhabitants of the Norman Isles, acquired nothing by exaction, but only by voluntary concession from the grantor,—their

doctrine was passive obedience and non resistance ! The Parliament of England then possessed the power of legislating for themselves, limited to their own territory ; but when their sovereign acquired dominion over other countries, and their commerce extended beyond the seas, it became necessary for them to extend their legislation also, in order to protect the rights of property in those individuals who embarked in it, and to regulate the same. As a matter of course, the King's Norman possessions were included in that legislation, especially as they were peopled chiefly by pirates, and situated so near to the seat of Government. Acts were occasionally passed which affected the Islands, and when he became a party to them, by giving them his assent, they were understood as having force of law, or at all events in a legal sense, though perhaps not in a physical one, considering the lawless character of the then inhabitants. It is true, the Islands were his private property, and that he still held absolute dominion over them. Hence, he might have resisted any interference ; but, considering no doubt, that on taking to the Crown of England, his minor interests had merged into the greater, and that the exercise of a sovereign power as Duke of Normandy was incompatible with that of King of England, as well as with the relations which ought to subsist between one part of the empire and another—he tacitly surrendered his exclusive power of legislating for the Islands, in such cases, and thus the English Parliament acquired a right concurrent with him which they have ever since maintained.

That right did not originate like that of legislating for the colonies and other possessions, by occupancy, by conquest, or by treaty ; but by an implied cession from the absolute Prince to the Parliament ; and in which the Islanders had no voice, because they were but little better than his slaves. That right is also founded on justice, for the protection which England has always rendered to the Islands, though rarely used, as in truth it ought, but nevertheless it has been exercised both often and long enough, to give a prescriptive title, for it dates back to the time of Henry the 7th down to the present period. It has been exercised only on such occasions as the nature of the case required it, and then the Islands have been specially named or included under general terms, to show that they were incorporated in, and bound by

such acts as were passed for their government. The King, in giving his assent to them in his public capacity, bound himself in his private one, and as a necessary consequence his vassals also; for his acts as King, were paramount to those as Duke, hence in issuing his fiat in the former character, he must necessarily be taken to have consented in the latter, and thus exercising the regal and ducal authority by one instrument, the Norman Isles become subject to the occasional legislation of the Parliament of England.

Acts of Parliament thus passed, were understood as having force of law, as long as the King did not resist them; but as the Monarchs of England, were sometimes prone to put themselves above the law, and by issuing proclamations and edicts, contrary to it, to supersede and abolish it altogether—thus, as in former times, making their *will* the law,—the people of England had no sooner acquired the power of making laws, than they directed their attention how to *retain* it; so as to put a stopper to those outbursts of absolutism. They therefore wrested from the King another concession, which was at length declared and ratified, to wit; “that the pretended power of suspending and dispensing with laws or the execution of laws, by regal authority, without the consent of Parliament is illegal.” Thus the Parliament at the settlement of the Constitution, acquired the right of Sovereignty, and every Monarch who has since ascended the throne has taken the crown with great limitations. Hence, says Blackstone—“An act of Parliament made is the exercise of the highest authority that this kingdom acknowledges upon earth. It hath power to bind, every subject in the land, and the dominions thereunto belonging, nay, the King himself if particularly named therein. And it cannot be altered, amended, dispensed with, suspended or repealed, but in the same forms, and by the same authority of Parliament: for it is a maxim in law that it requires the same strength to dissolve as to create an obligation.” This is the reason why Orders in Council transmitted to the Islands so often have this singular provision; “as far as the same are consistent with the constitution, and the provisions of any *Act of Parliament which relates to them.*”

The sovereign power then is vested in the Parliament of England, of King, Lords and Commons, in their collective

capacity ; consequently the legislative jurisdiction of the Monarch, in his *single* capacity, is *limited* to such cases as where Parliament leaves a void by non-legislation ; and in this respect, the Islands *now* stand upon the same footing as the Colonies and other Possessions abroad do—all of which are subject to the general superintendence of the Imperial legislature, as well as to the particular direction of the Crown : the latter being always passive to the former. It has however been maintained that the Islands of Jersey and Guernsey, having been originally part and parcel of the ancient duchy of Normandy, are properly known as “ *a peculiar*,” but this notion has long since been exploded. Lord Coke in his fourth institute, says “ Both these Islands’ (meaning Jersey and Guernsey) did, of ancient time, belong to the Duchy of Normandy ; but when King Henry I had overthrown his eldest brother, Robert Duke of Normandy, he did *unite to the Kingdom of England*, perpetually, the Duchy of Normandy, together with these Isles ; albeit, King John lost the possession of Normandy, and King Henry III. took money for it, yet the inhabitants of these Isles with great constancy remained, and to this day do remain, true and faithful to the Crown of England ; and the possession of these Islands, being parcel of the Duchy of Normandy, are a good seizin to the King of England of the whole Duchy !! To this we may add the fact, that the act of Parliament, called the act of *settlement*, comprehended the Islands with the rest of the British dominions and made them subject to the law of succession which regulated the Crown of England. Being then *united to the Crown*, they became *dependent on the Crown*, just as much as Scotland and Ireland, and *not on the person* of the Sovereign, for they are no longer his private property. It therefore follows that like all other dependencies they are subject to Parliamentary legislation. Dependencies are known in the Statute Book under two names ; colonies and possessions. Jersey and Guernsey are not colonies but “ British possessions abroad,” and where they are not specially named, they are included under that designation. There is this difference as regards the general run of laws to distant countries : the common law of England runs to the Colonies only, but the Statute law, or rather such acts as have been passed for the purpose, runs not only

to the Colonies, but to all other possessions of the Crown. They are the mandates of the Sovereign authority, and whilst the ties of relationship subsist between its dependent countries and itself they are bound by the same.

In England, the most liberal nation in Europe as to Colonial government, all public men maintain the supreme legislative authority of the Parliament over the Colonies, not only in regard to commerce but other matters ; and it is notorious that this authority is exercised every year ; that, when a Colony or other possession is named in an Act of Parliament, it is bound to obey it. Every colony and dependency in its infancy, required the aid of the Parent State, and, having been planted or protected by her, and having grown under that protection ; it is natural that it should be governed for their mutual advantage.

The opinion that Colonies and other possessions are bound to obey those laws only to which they have consented, is wholly untenable ; since the British Parliament has constantly maintained a supreme legislative authority over them. Doctor Franklin, whose memory is so justly revered, as well in Europe as in America, for his attachment to public liberty, and for the firmness with which he maintained the rights of the Colonies, when interrogated before the House of Commons, respecting the right of Parliament in that particular, admitted the right. The Parliament, instead of renouncing altogether the right of legislating for the Colonies, has, by the Act of 1778, only made an exception to that right, with regard to internal taxation.

But let us refer to cases within our own recollection. The dispute between the House of Assembly of Jamaica, and the executive government, upon the power and jurisdiction of Parliament, to pass Laws, to bind the inhabitants of that Island, and the Governor's magnanimous and powerful vindication of the supremacy of the Imperial Legislature ought never to be forgotten. The words of Lord Mulgrave were : " For all your established privileges, I shall entertain the most inviolable respect. But as the representative here of your Sovereign, and of mine, I cannot listen to the declaration of any such doubt (that Parliament had the right to legislate for the Colonies) addressed to me, without asserting in the most unequivocal terms, the *transcendent power of the*

to conform thereto, which, it was contended, might be in direct violation of their oaths of office, by which they are sworn to maintain the constitutions of the Isle justly, and preserve and keep, with all their power, the laws, liberties, customs and ancient usages, of right accustomed in the Island. The first two queries, are readily solved : an Act of Parliament cannot pass without the consent of the three estates, King, Lords, and Commons ; it is, therefore, as far as these Islands are named and concerned, the Act of the King, as Duke of Normandy, as well as of the Council themselves, and no discretionary power of afterwards invalidating their own Act can exist : and as to the latter question, it is almost too indelicate to require a comment. The prerogative of the King and Council over these Islands must either be acknowledged, or denied—if it is acknowledged, the Royal Court are bound to obey ; if denied, the right of legislation is nominal only in the King and Council, and requires the *fiat* of the Royal Court to stamp it with validity.

“ The accompanying Order of Council so much contended for, as absolutely necessary before an Act of Parliament can be acknowledged, registered, and have the force of law here, is not, as would be inferred, a second solemn decision of his Majesty in Council, after the passing of the Act, in order to render it effective in the Islands, but the more regular way than had been adopted of transmitting them ; as appears by an Order of Council dated 1st July, 1731, wherein it is, amongst other things, ordered by His Majesty, That, for the future, whenever an Act shall be passed in the Parliament of Great Britain relating to the Islands of Jersey and Guernsey, printed copies of the said Acts shall be transmitted by the Clerk of His Majesty's Privy Council, as soon as conveniently may be, to the Royal Courts of the said Islands, signifying his Majesty's pleasure to register and publish the said Acts and to cause the same to be carried into due attention.

“ The words of this Order in Council, can no way be construed to prove it indispensably necessary that such acts should be first registered to give them the effect of law, it is a positive mandate to register, publish and carry them into execution ; and whether registered or not, they are of equal force, as appears by a prior Order of Council, of the 8th

Sept. 1698, sent to Jersey, and founded upon the opinion of the then Attorney General, Sir John Trevor, which positively states, that it is *not necessary that such Acts should be registered* to make them obligatory ; and that the registration is only for the convenience of the Island, that they may have notice of what acts are made in England to bind them. But a recent Order in Council, bearing date 7th May 1806, will, it is likely, lay this question at rest for ever, as it therein asserted, upon report of His Majesty's law officers, that *the registration of an Act of Parliament is not at all essential* to the operation thereof, and that his Majesty's subjects in the Islands of Guernsey are bound by law to take notice thereof, though no registration should take place, as was determined in the Court of Exchequer in 1772—[See *Acts of Parliament, their registration not essential.*]

THE STATES.

The exact period of the formation of the States, (says Mr. Durell) is unknown, though undoubtedly very ancient. They are recognised to have been such as they are now in the Ordinances of the Royal Commissioners Pyne and Napper in 1591, but they existed in their present form long before that time. Some times, however, the States contained all the notables of the Island, and it is perhaps owing to that circumstance, that they are now called in the Records the *Commun Conseil de l'Isle*. In 1545-6, Feb. 10, one of those meetings took place in Trinity Church, to take into consideration a letter from the Governor, the Marquis of Hartford (Duke of Somerset.)* On the 6th of October, 1554, a meeting of the States is styled *Justice et tous les Estats et Commun Conseil de ceste Isle*. Its proceedings were important as being a defence of their privileges. The States met in June 30, 1546, in the heading of which are recorded the names of all the absent members. A few years afterwards, December 30, 1553, Richard Payn, Rector of St. Ouen, was fined for his non-attendance in the States. But not to multiply very ancient examples, one more will

* The States met on the 19th of October, 1542, and did already, as they do at this day, contain a full heading, or denomination of all the members.

suffice. The Heading of the States of the 24th of January, 1587-8, only a little more than three years and a half before Pyne and Napper, was the very same as at this day. It results therefore in substance, that the present constitution of the States had existed long before Pyne and Napper, and that, it appears from the earliest Records that they exercised some legislative power. The Court however did the same, so that the Island till 1771, presented the anomaly, of having simultaneously two separate legislative bodies. Some of the headings of the States merely name the Jurats, and then add generally, the *Common Council of the Island*, and there is still extant an Order of Bailly Herault in 1618, to summon the States to advise the magistracy, (*pour conseiller la Justice.*)

The Assembly of the States of the Island of Jersey (as now constituted), is composed of the Bailiff, and the twelve Jurats of the Royal Court, who sit as members of the Legislature by virtue of their office, as the Judges do in the house of Lords; the twelve Rectors for the time being of the twelve parishes in the Island, who may in this respect be assimilated to the Bishops; and twelve Constables of the said parishes, elected by the rated inhabitants, somewhat like the members of the Commons house of Parliament. The Lieutenant-Governor of the Island who represents the Queen, is also a member of the States, has also the right of speaking, and has the power to place his veto upon all such enactments as he may think affect the prerogative of her Majesty, but has no vote; and the Attorney and Solicitor-Generals, and the Viscount, or rather his Deputy, sit as Members, but like the Governor have no vote, though the two former may speak. The States have no regular periods of meeting, but may be assembled by the Governor, or by the Bailiff, with his consent (Order in Council of 1618 and 1619), and dismissed at the pleasure of the President: But if the Bailiff and Jurats shall require an assembly of the States, he is bound not to postpone it beyond fifteen days, excepting he shall have cause for so doing, which he must report to the Lords of the Privy Council, as soon as possible, wind and weather permitting. They are summoned by the Sheriff or Denunciators; and their deliberations have recently been made public. The Bailiff or Chief Magistrate of the Royal Court of the Island, whose office is

in the gift of the Crown presides in the Assembly, conformably to orders issued in the reign of Henry the 7th, and James the 1st., and is in fact the Speaker, or Prolocutor, and has a casting vote in their deliberations; as also the right of restraining the force of their enactments by his dissent. He, or in his absence, the Lieut. Bailiff collects the votes, but if either the Bailiff or his Lieutenant, should die, the other being absent from the Island, the Governor or his Lieutenant presides the meeting, until a Judge Delegate is chosen, who on being sworn, takes the chair and presides the sittings of the States until the vacancy is filled. The twelve Jurats of the Royal Court are elected for life, by those who are assessed to the public rates of the said Island, at general elections. The twelve Rectors of the twelve parishes in the Island, whose livings are in the gift of the Crown, sit as members of the States for life; and the twelve Constables sit for three years from the date they are sworn into office: they are returned one from each Parish in the Island by the tax-payers, at Parish Elections holden for that purpose. The Assembly must be composed of seven of each body (at the least), unless on very urgent occasions, but a bill has recently passed the States, providing that twenty-four members, without regard to the body they belong to, shall be competent to proceed to business. In case of absence, he whose excuse is not allowed is fined, but the fines are never levied on the defaulters. In these meetings, accounts of the public receipts and expenses are stated and audited: differences arising about the disposal and administration of the Church Treasuries, are examined and determined: works proposed to be done for the common benefit are maturely weighed and considered, and money raised for the public service; but the States are not competent to pass any Bill for the levy of Duties and Taxes, without the permission of the Crown, first had, and obtained. [See *Duties and Taxes.*] Deputies are appointed to carry grievances to the Queen. Ordinances against profaners of the Sabbath, blasphemers, swearers, drunkards, and disorderly persons are enacted, &c., &c. The States have also the power of enacting, repealing and amending any provisional Laws relating to any subject matter in the Island, provided, however, that no such

Act is repugnant to any Act of Parliament relative to the Island or to any Order in Council, and provided that it be in force for only three years, unless it shall have received the Royal Assent. But they are not authorized to enact ordinances which may touch the prerogative of the Crown, or the rights, privileges, and properties of their fellow subjects, or such as are contrary to the common law, derived from the customs of Normandy as they are delivered and explained by Rouillé and Terrien, without an enabling power, though they should be only provisional ones. Every act therefore which is repugnant to anything in those commentators, or to the customs of the Island, until it has received the royal assent is still born; and though it bears the form of a Legislative enactment, it is absolutely lifeless, and of no force whatever. All questions which are brought before the States for their deliberation, are determined by a majority.

MEMBERS OF THE STATES.

His Excellency Major Gen. Sir Edw. Gibbs, K.C.B.

President.—Sir John De Veulle, Bailiff.

Jurats.—Charles Le Maistre, Ph. De Carteret, Philip Marett, G. Ph. Benest, G. Bertram, N. Le Quesne, Ph. Le Maistre, E. L. Bisson, Ph. De St. Croix, Ed. Nicolle, Ph. W. Nicolle, and T. Duhamel, Esqrs.

Clergy.—Rector of St. Helier, the Very Rev. Frs. Jeune, D.C.L., Dean; St. Martin, Rev. G. Balleine; St. Mary, Ph. Guille; Grouville, J. Mallet; St. Lawrence, G. Du Heaume, M.A.; Trinity, J. T. Ahier; St. Peter, Ph. Fil-leul; St. Brelade, E. Falle, M.A.; St. John, Ph. Dupré; St. Saviour, Ed. Durell, M. A.; St. Clement, Ph. Aubin, M.A.; St. Ouen, Ph. Payne.

Constables.—One elected by each parish.

Queen's Officers.—Thomas Le Breton, esquire, Attorney General; J. W. Dupré, esquire, Solicitor General; Ph. Le Gallais, esquire, Deputy Viscount.

Officers of the States.—Francis Godfray, esquire, Greffier and Treasurer; John Aubin, H. Godfray, jun. esqrs. Under Sheriffs; Mr. Ph. Le Cras, Usher.

THE LAWS.

The Laws of Jersey, are derived from four sources. First, the ancient Customs and Laws of Normandy, which are contained in an old book called "*la somme du Mançel*," or Mançel's Institutes, or, according to Mr. Le Geyt, the Coutumier of Normandy; secondly, municipal and local usages, which may be assimilated to the Common Law of England; thirdly, constitutions and ordinances made by different Sovereigns, or their commissioners empowered thereunto under the Great Seal; acts passed by the States and confirmed by her Majesty, together with such rules and orders as may from time to time be transmitted from the Council Board; fourthly, from Acts of Parliament wherein the island is named; and lastly, from precedents and former judgments recorded in the rolls of the Court. These last cannot strictly speaking be said to be the law, but rather declaratory of what the law is; for, says Mr. Falle, "nothing can be law without the royal authority." Nevertheless great regard is had to them, and says Mr. Durell, "from their being overwhelmingly numerous, and often unjust and contradictory, (see *Precedents*) some may be taken out to suit every occasion."

EXECUTIVE AND JUDICIAL AUTHORITY.

The executive and administrative authority is vested in the Lieut.-Governor, Bailiff and Jurats, Attorney and Solicitor Generals, Sheriff, Denunciators, Constables and Police: the Judicial is vested in the Privy Council, the Royal Court, the Ecclesiastical Court, and the Feudal Courts, but there are exceptions to this rule. The Feudal Courts are subordinate to the Royal Court, and the Ecclesiastical Court to the Bishop of Winchester, and both these to the Privy Council. It has however been held that the proceedings of the Ecclesiastical Court may be controuled by the Royal Court, when it exceeds its jurisdiction; if not, by the superior Courts of Westminster, though in *ordinary* cases, the latter have no jurisdiction in the Island.

JURISDICTION OF THE COURTS OF WESTMINSTER.

It has been generally maintained, by all public writers, from Mr. Falle downwards, that the Courts of Westmins-

ter have not any authority in the Islands, which is true as regards ordinary cases. It was not subject to them even before the reign of King John. The Governor held the pleas, and in extraordinary cases, resort was had to Normandy, yet never to England. But in aftertimes, says Mr. Falle, contentious persons, not acquiescing in the determinations here, instituted suits in the English Courts, a practice which was too readily admitted ; and persons were summoned from Jersey to attend them. This vexatious proceeding was remedied in the reign of Edward the Third ; and accordingly, when towards the end of that reign, an attempt was renewed to bring a matter of trespass from the Island into the King's Bench, the Court would not admit it,—and decreed thus, as appears in the fourth institute of Lord Coke's—"An action of trespass was brought by A. in the King's Bench, for a trespass done by B. in the Isle of Jersey, whereupon in the record this entry is made:—'and whereas the aforesaid business cannot be determined in this Court, because the Jurats of the said Isle, cannot come before the justices of this Court, nor by right ought they, nor ought any business originating in that Isle ; wherefore the whole record of this business shall be sent into the Chancery of our Lord the King, that he may forthwith, issue his Commission to whomsoever he may think proper, to hear and determine the said business in the said Isle, according to the custom of the said Isle.' By this it appeareth that although the King's writ runneth *not* into these Islands, yet *His Majesty's Commission* under the Great Seal *doth* ; but then only on urgent and uncommon emergencies. The commissioners appointed under the said commission must first exhibit their commission in court, and have it there enrolled ; but in *no* case concerning *life, liberty, or estate*, have they the power to determine any thing contrary to the advice of the Judges of those Islands, who are to sit, opine, and make conjunctive records of their proceedings with them ; and moreover they (the commissioners) must always judge and determine *according to the laws and customs of the Isles.*"

"Hence," says Mr. Falle, "that great lawyer, (Lord Coke) from whom I have transcribed the above record owns that *the King's writ runneth not into these Isles*, the like exemption belonging to them all. For which another emi-

nent man of the same profession, (Lord Hale*) gives these two reasons : 1, because, says he, the ' Courts there (in the Islands) and those here (at Westminster) go not by the same rule, method, or order of Law : 2, because those Islands, though they are parcel of the dominion of the Crown of England, yet they are not parcel of the realm of England, nor indeed ever were ; but were anciently parcel of the Duchy of Normandy, and are those remains thereof which all the power of the Crown and Kingdom of France have not been able to wrest from England." " But though," says Mr. Falle, "*the King's writ runneth not into these Isles*, the same great lawyer observes from the foresaid record, that His Majesty's Commission under the great seal, doth, and which we readily acknowledge, there being diverse instances of such commissions issued forth both in former and latter days, yet always upon urgent and uncommon emergencies. And the Commissioners have been generally taken from the Chancery, or have been otherwise men versed and knowing in the Civil Law, the service being thought to require persons so qualified. Their coming suspends the ordinary forms of justice ; but first they must exhibit their commission in Court, and have it there enrolled ; and then they can in no case, concerning life, liberty or estate, determine any thing contrary to the advice of the *Jurats*, who are to sit, opine, and make conjunctive records of their proceedings with them ; and lastly *they must judge according to the laws and customs of the Isles*."

Having quoted Mr. Falle, and his authorities at length, and giving him full credit for his veracity, we shall now direct our attention to the opinion which has been laid down, that the *King's writ runs not into the Islands*. An adjudicated case in the Court of King's Bench, is referred to, as cited in the forth institute (a posthumous work) of Lord Coke. " An action of trespass was brought by A. in the King's Bench for a trespass done by B. in the Isle of Jersey : whereupon in the record this entry is made :—' And whereas the aforesaid business cannot be determined in this Court, be-

* History and Analysis of the Common Law of England, written by a learned hand, (supposed Lord Chief Justice Hale, published, an 1713, ch. 9.)

cause the Jurats of the said Isle cannot come before the justices of this Court, nor by right ought they, nor ought any business originating in the said Isle; wherefore the whole record of this business shall be sent into the Chancery of our Lord the King, that he may forthwith issue his commission to whomsoever he may think proper, to hear and determine the said business in the said Isle according to the custom of the said Isle.' By this it appeareth that although the King's Writ runneth *not* into these Islands, yet His Majesty's Commission under the Great Seal *doth*; but then only on urgent and uncommon emergencies."

Now his lordship's conclusion must be taken in connection with the premises: this was an action for a trespass, between party and party; the process for which was necessarily the *Common Writ*, the right of issuing which, was the only question mooted; whereupon the above record was entered. It is admitted upon all hands that this writ "runneth not into the Islands." But there are cases of *public* wrongs in which the *power of the Crown* is called in to remedy: then, the King becomes a party to the suit, and the process is by extraordinary means, called *Prerogative Writs*, which *do* run into the Islands of Jersey and Guernsey. Blackstone says, "and though certain of the King's Writs or processes from the Courts of Westminster, do not usually run into privileged places, yet it hath been solemnly adjudged (Cro. J. 543, 2, Roll. abr. 292, Stat. II. Geo. 1. c. 4, 4, Burr. 834) that ALL *Prerogative writs* may be issued to EVERY DOMINION OF THE CROWN OF ENGLAND!!!" And in another place speaking of exempt jurisdictions, he says "ALL *Prerogative writs* (as those of Habeas Corpus, Prohibition, Certiorari and Mandamus, *may issue to all exempt jurisdictions*, because the privilege that the King's writ runs not, must be intended between party and party, FOR THERE CAN BE NO SUCH PRIVILEGE AGAINST THE KING!!!" Mr. Clark, in his Colonial Law, p. 102, observes, "though the *ordinary* writs of process from the English Courts do not of course run in the Colonies, yet *Prerogative Writs*, such as mandamus, prohibition, habeas corpus and certiorari, may issue, on a proper case, to *every* dominion of the crown; but as to a colony, it being in the discretion of the Courts whether they will issue those writs or not, they would not chuse

to exercise that power when the cause is one which they cannot properly judge or give the necessary relief. Therefore, on imprisonments in the plantations, it has been more usual to complain to the King in Council, and petition for an order to bail or discharge, than to apply to the King's Bench for an Habeas Corpus. [Rex. v. Cowle, 2 Burr. 856; Cro. Jac. 484.] However, *it is clear that the King's Bench has that jurisdiction*, and it is expressly noticed and reserved by the Act of Assembly respectively establishing the Courts of King's Bench and Common Pleas in St. Christopher and Nevis." [See Stokes's Law of Colonies, 6, and the authorities there cited.]

The following account of the jurisdiction of the English Courts in these islands is taken from Hale's History of the Common Law.

Mich. 42, Edw. 2, Rot. 45, *coram rege*.—A great complaint was made by petition against the Deputy Governor of these Islands for divers oppressions and wrongs done there. This petition was by the Chancellor delivered into the Court of B. R. to proceed upon it, whereupon there were pleadings on both sides; but because it appeared to be for things done and transacted in the said Islands, judgment was thus given:—"Et quia negotiam prædict' in curia hic terminari non potest, eo quod juratores insulæ prædict' coram' justiciariis hic venire non possunt' nec de jure debent, nec aliqua negotia infra insula prædicta emergentia terminari non debent, nisi secundum consuet' insulæ prædictæ. Ideo recordum retrotraditur Cancellario ut inde fiat commissio Domino Regis ad negotia prædicta in insula, prædicta audienda et terminanda secundum consuet' insulæ prædictæ." And accordingly, 14th June 1565, upon a report from the Attorney General, and advice with the two Chief Justices, a general direction was given by the Queen and her Council, (which we shall presently give at length,) that all suits between the Islanders, or wherein one party was an Islander, *for matters arising within the Islands*, should be there heard and determined. "But," says Mr. Clark, in his Colonial Law, p. 702, "still this is to be taken with this distinction and limitation, viz: that where the suit is immediately for the King, then the King may make his suit in any of the Courts here, especially in the Court of King's Bench. For instance in a *quare im-*

pedit brought by the King in B. R. here for a church in those Islands, so in a *quo warranto* for liberties there ; so a demand of redemption of lands sold by the King's tenant within a year and a day, according to the custom of Normandy ; so in an information for riot, or grand contempt against a governor deputed by the King. These and the like suits have been maintained by the King in this Court of King's Bench here, though for matters arising within those Islands. This appears Paschæ, 16 Edw. 2, *Coram Rege*, Rot. 82 ; Mich. 18, Edw. 2, Rot. 123, 124, 125 ; and Pasc. 1, Edw. 3. Rot. 59. And for the same reason it is, that a writ of *habeas corpus* lies into these islands for one imprisoned there, for the King may demand, and must have an account of any of his subjects loss of liberty, and therefore a return must be made to this writ, to give the Court an account of the cause of imprisonment ; for no liberty, whether of a county palatine or other, holds place against those *brevia mandatoria*, as that great instance of punishing the Bishop of Durham for refusing to execute a writ of *habeas corpus* out of the King's Bench, 33 Edw. 1., makes evident." To this, we may add, the deprivation of Office of the High Bailiff of the Isle of Man, for not attending to a writ of *habeas corpus ad subjiciendum*, and the opinion of Mr. Plummer, counsel for the States of Guernsey, who in his address to the House of Lords in 1805, against the smuggling act, admitted the general right, independent of the Habeas Corpus Act, by which the Crown might, by virtue of the general power that belongs to the Crown, have addressed a mandatory writ to all its dominions, even to its foreign dominions : and Mr. Allen, counsel for the electors of Jersey, in his address to the royal commissioners in 1811, "maintained as an English lawyer, that the inhabitants of Jersey and Guernsey had now as much legal right to the benefit of the Statute 31 Ch. 2nd, as their fellow-subjects in England." (See his argument p. 60.)

But to return to the "general direction" before mentioned. In the reign of Queen Elizabeth a complaint of the inhabitants of Jersey and Guernsey was made to her Majesty, that contrary to their charters they were called to answer in England by process awarded against them out of the Courts of Westminster, when the following order was issued :—

“ At Westminster, the twenty-second June, 1565.

“ Whereas heretofore for a good time past, humble suit was made to the Lords on behalf of the inhabitants of the isles of Jersey and Guernsey, who found themselves much grieved that divers of the same isles (contrary to their ancient charters and liberties), were called to answer here *by process awarded them* out of sundry of the Queen’s Majesty’s Courts of Record here, and after Judgments given in the the same isles, appeals made hither unto the said Courts, to the great trouble and vexation of the said inhabitants of which they humbly desired of their Lordships to have redress and reformation. Their Lordships thought good for the better understanding of that which should be thought requisite to be ordered in this matter upon certain knowledge what the law was touching the same charters, required both her Majesty’s Solicitors General, to learn of the two Lord Chief Justices what their opinions were in law herein ; and also prayed Sir Hugh Paulett, Knight, Captain of the said isle of Jersey, to signify his mind touching the same. Both whose opinions being this day returned to their Lordships in writing, which remain in the council chest. Their Lordships according thereunto thought good to order, that from henceforth *all suites commenced there already, or hereafter to be commenced between any subjects of those Isles should be heard, ordered, and judged in the same isles, and not within this realm*: and the like order their Lordships determined should be kept in suits arising and concerning *two parties* whereof the one is resident here in England, and the other in the said isles. And further their Lordships resolved that no appeals should be made from any sentence or judgment given in the same isles hither, but only according to the words of their charters “ *au Roi et son Conseil*,” which agreeth as Sir H. Paulett alledgeth, with such order and form as hath heretofore been accustomed ; which their Lordship’s determination they commanded should be entered in the register of Council, and a transcript made thereof and subscribed by one of the Clerks of the Council, and delivered to the party, complainant. And also that warning should be given to the Chief Officers of the Courts of Westminster here, especially to the Chancery and Court of Requests, to give order that no process be henceforth awarded out of the same Courts against any of the

officers or inhabitants of the said isles, whereby they or any of them might be troubled contrary to this order and resolution.

(Signed)

“W. SHARPE.”

Great stress has been laid upon this order, as interdicting the Judges from issuing writs to the Island ; which writs by the bye, were the *common* processes, which do not run into privileged places : and attempts have been made to strain the order, to make it appear as interdicting *every* kind of process : now for argument's sake, we shall give it that latitude, and yet maintain that it is not worth a rush : Judge *Blackstone* says:—“ By the 2d. Edw. III. c. 8, and 11 Rich. II. c. 10 ; it is enacted that no commands or letters shall be sent under the Great Seal, or the Little Seal, the Signet or Privy Seal, in disturbance of the law, or to disturb or delay common right ; and though such commandments should come, THE JUDGES SHOULD NOT CEASE TO DO RIGHT ; which is also made part of their oath by statute of 88 Edw. III. st. 4, and by 1 Wil. and Mary st. 2, c. 2, it is declared, that the pretended power of suspending or dispensing with laws, or the execution of laws, by regal authority without consent of Parliament is illegal.” The writ of *habeas corpus, ad subjiciendum*, is grounded on Acts of Parliament in which the Islands are specially named ; and though those Acts should be opposed to ten thousand Charters, the Charters must all give way to the supremacy of Parliament. In the appeal to the House of Lords (1835) on the Islington Market Bill, which went to nullify a Charter granted by Edward III., the Judges laid down the Law, “ THAT AN ACT OF PARLIAMENT COULD TOUCH A CHARTER, BUT A GRANT FROM THE CROWN COULD NOT TOUCH AN ACT OF PARLIAMENT.”

The warning or mandate from the sovereign it will be seen was given to the Courts of *Chancery* and *Requests*, and not to the Courts of Queen's Bench, Common Pleas, Exchequer and Admiralty. Whatever force that mandate might have had in former days, it is quite certain that it has none now ; and that the Judges of the present times would not hold themselves bound by it, especially in the teeth of so many Acts of Parliament as have since been passed, giving them jurisdiction ; besides this, the Crown having been a party to those

acts, it follows as a necessary consequence that the order or mandate must be considered as virtually repealed. Take for instance, the recent Act, 4, Will. 4, by which it is evident that process from the Courts of Chancery and Exchequer may be served in Jersey and Guernsey. The Act is intituled, "An Act to explain and *extend* an act of the second year of his present Majesty, to effectuate the service of process, issuing from the Courts of Chancery and Exchequer in England and Ireland." It recites that all writs of subpoena or letters missive from those courts "shall be and they are hereby *extended to any defendant or defendants, in any suit or suits* as herein before mentioned, who shall appear by affidavit to be *residing in any place*, specifying the same, *out of the kingdom* of Great Britain and Ireland." But to return to those Courts to which the said Order was not given, we shall first speak of the Court of Queen's Bench. This is the supreme Court of Law in the Kingdom. Its jurisdiction is of a transcendant nature, for it keeps all inferior jurisdictions within the bounds of their authority, and may either remove their proceedings, to be determined there, or prohibit their progress below, and is reserved in the 7th article of the Constitutions of King John, by which the Courts of Jersey and Guernsey were established. It controuls all civil corporations. [See *Quo Warranto*.] It commands Magistrates and others to do what their duty requires, in cases where there is no other specific remedy. [See *Mandamus*.] It protects the liberty of the subject, by summary and speedy interposition. [See *Habeas Corpus*.] It takes cognizance of both civil and criminal causes, the former in what is called the Crown side, [see *Oppressions, crimes and offences committed abroad*,] the latter in the plea side of the Court. [See *Public Offices, malversation abroad*.]

The Court of Common Pleas has cognizance of all matters of law arising in civil causes, whether in real, personal and mixed actions, and the Court of Exchequer in matters of public revenue, though by a fiction of law common to this Court, as well as to the Queen's Bench, personal suits may be prosecuted. The Jurisdiction of the Court of Exchequer here was fully established in 1708, in an action of the Crown against Lady Dowager Germyn and Thos. Fooks, Esq., Executor of Lord Jermyn, and against Philip Pipon, his

farmer, in order to bring them to account for the fines and forfeitures belonging to the Crown, which had been received by the said Lord Germyn, or his farmer in this Island: and a commission to take evidence, in support of the action, was issued by the Court of Exchequer, authorizing and appointing John Dumaresq, Junr., Philip Patriarche, James Pipon and Elias Dumaresq, all of the said Island, to examine the witnesses. The High Court of Admiralty has also jurisdiction in maritime cases. [See *Admiralty*.] Besides, there may be mentioned the Bankruptcy Court, [see *Bankrupt Laws of England, &c.*] and the Court for relief of Insolvent Debtors, under the Insolvent Acts and Imprisonment for debt abolition act. The jurisdiction of these Courts however depends entirely on circumstances; generally speaking they have no cognizance of matters arising in the Islands between party and party, especially when both are domiciled here, unless it is given to them by statute; but in all cases where the Crown is adjoined to a Plaintiff, or is directly concerned, they have jurisdiction, and in cases of bankruptcy and insolvency, the jurisdiction of these Courts depends entirely on the commission of certain acts in *propria persona* within the cognizance of the English laws—and on the fact, that in judgment of law, personal property, *follows the person*, and consequently becomes subject to the same jurisdiction as the person of the owner.

ROYAL COURT.

The execution of the law is entrusted to twelve Jurats, presided by the Bailiff or his Lieutenant, who is not to govern or prejudice their opinions, nor ever to give his vote in Court, except in cases where an equal division takes place; but when a majority prevails he is bound to follow it. (See *Bailiff, his oath*.) The dukedom of Normandy was originally divided into seven great bailiwicks, which were subdivided into less. Of these seven, the Islands of Jersey, Guernsey, Alderney and Serk, anciently formed one bailiwick. Over the great bailiwicks presided an inferior order of justiciars, who were named Baillies, their power extended not beyond their respective bailiwicks, which limitation was also recognized in the constitutions of King John. About the year 1370, the Islands were divided into two bailiwicks, since

when the power of the Chief Magistrate has been considerably reduced. He is now merely the mouth-piece or organ of the Court, to sum up their opinions and to pronounce their judgments.

The Jurats are elected by the people for life, but seldom as the law enjoins, from among the most honorable and independent of their country, and the best qualified in respect of education, character and fortune, for the performance of their duties. They are subject to dismissal by the Queen for corrupt conduct, have no salary, and decide all causes according to their own individual ideas of law and justice; for none of them ever had any thing like a *legal* education. Prior to 1771, the royal court, composed as above described, had assumed, almost to the total exclusion of the States, the power of making laws and ordinances for the government of the people, which they were afterwards to execute. This inordinate power led, as might be expected, to arbitrary rule, and great and manifold abuses. Its injurious effects were at length made apparent to the King in Council, who, by his order of the 28th March, 1771, deprived the Royal Court of the authority to enact laws or ordinances, and conferred it under certain conditions and restrictions upon the States of the Island. The Court cannot hold its sittings except in the presence of the Bailiff or his Lieutenant, and in cases where the Bailiff is absent, and his Lieutenant present, against whose judgment an exception has been made, the senior magistrate must preside, unless the Bailiff by *letter* appoints a *Juge Commis. Falle*, in his chapter, on the Civil jurisdiction, says—"The whole authority of public judgments residing thus in the Bailly and Jurats, there go next to constitute the Court divers Ministerial offices under them : as *le Procureur du Roy*, or Attorney General ; *l'Avocat du Roy*, or Solicitor-Gen. ; *le Vicomte*, or High Sheriff ; *le Greffier*, or Clerk, who has the custody of the rolls or records ; six pleaders, or Solicitors at the Bar, stiled *Avocats du Bureau* ; two under Sheriffs, called *Demonciateurs*, because 'tis their part to publish the injunctions of the Court ; and lastly, *l'Huissier* or Usher, a necessary attendant for the preserving of order. To whom let me add, (though not properly a Member of the Court) *l'Enregistreur*, or keeper of the register for hereditary contracts, which

having first passed † the view of the Magistrates, must next, on pain of nullity, be brought to this officer to have an entry made of them, whereto all men may have recourse, no secret and unregistered sale of Lands or Rents being of any validity in this Island. All which employments now named (saving the three furnished by Patent), are at the disposal of the Bailly."

MEMBERS OF THE COURT.

BAILIFF.—Sir John De Veuille, Knt.

LIEUT.-BAILIFF.—Ph. Maret, Esq.

JURATS.—Charles Le Maistre, Esq., Philip Maret, Esq. Lt. B., G. Ph. Benest, Esq., G. Bertram, Esq., Nicholas Le Quesne, jun., Esq., Ph. Le Maistre, Esq., Edward Leonard Bisson, Esq., Ph. De Ste. Croix, Esq., Edward Nicolle, Esq., Ph. W. Nicolle, Esq., and Th. Duhamel, Esq.

QUEEN'S LAW OFFICERS.—T. Le Breton, Esq. Attorney-General, J.W. Dupré, Esq., Solicitor-General, P. Le Gallais, Esq., Deputy of Matt. Gosset, Esq., Viscount.

OFFICERS OF THE COURT.—Frs. Godfray, Esq., Grefier, John Aubin, Esq., and H. Godfray, Esq. Denunciators.

ADVOCATES.—John Hammond, Esq., Frs. J. Le Couteur, Esq., Frs. Godfray, Esq., John Aubin, Jun., Esq., P. Le Sueur, Esq., and James Godfray, Esq.

USHER.—Mr. Ph. Le Cras.

RECEIVERS OF HER MAJESTY'S REVENUE.—Major-General Touzel, and Matt. Amiraux, Esq.

ATTORNIES.—Messrs. Ph. Journeaux, John Aubin (son of Ab.) H. Godfray, Jun., P. Le Gallais, W. G. Le Gallais, Moses Gibaut, J. Aubin, Jun., Chs. De Ste. Croix, Moreau Amy, J. Blampied, Ph. Messervy, J. Mourant, T. Tessier, P.J. Simon, F. Le Maistre, C. Ahier, P.C. Godfray, T. Gallichan, J. Le Brun, J. Dallain, Frs. J. Le Montais, P. Richard, Geo. Deslandes, J. Le Couteur, J. Godfray, (son of Hugh) Geo. Ph. Horman, Ph. Gruchy and Ph. Le Brocq. Most of these are also surveyors.

NOTARIES PUBLIC.—J. Pipon, P. Journeaux, M. Noel, P. Le Gallais, T. Mallet, J. Blampied, G. Burr, P. Godfray, J. M. Mauger, C. De Ste. Croix, J. P. Deal, J. Payn, W. R. Matthews, and T. Bertram.

† Thence called Passemens.

JURISDICTION OF THE JERSEY COURT.

The Court thus composed is a Royal Court, having generally, cognizance of all pleas, whether real, personal, mixed or criminal, *arising within the Island*, treason only excepted, and is immediately subordinate to the Queen in Council by appeal or doleance. Some other matters are also reserved for the Royal cognizance, such as disputes and differences, that may arise between the Governor and Bailiff, and laying violent hands on them. With the assistance of a jury whose business is to give a verdict on questions of fact, they try all persons accused of misdemeanour and crimes, and award the punishment to be inflicted on delinquents; and in these cases no appeal lies from their sentence, but it may be carried into immediate execution, even to the extent of capital punishment. It has been maintained that the Court is competent to try causes arising out of the Island, *if the parties be within it*; as for instance, a mutiny on board a merchant vessel in any part of the world, whether the vessel and crew belong to Jersey or not; a breach of promise of marriage, committed any where in Her Majesty's dominions, and even a debt contracted in England, the recovery of which may be barred by the Statute of Limitations there, provided it is not of ten years' standing!—The Court must take cognizance of the records, judgments, &c., of her Majesty's Courts elsewhere, provided the documents be properly authenticated."

It is clear however, that the Constitutions of King John do not give the Courts of Jersey and Guernsey, any cognizance of matters arising out of their separate jurisdictions: so general was this opinion entertained in former times, that the Courts invariably acted up to it, for many succeeding ages; and it is only of late years, since the introduction of steam communication between the Islands and England, and the great commercial intercourse between the two countries arising out of it, that the Courts have departed from that which they recognized as their constitution, by taking cognizance of debts; firstly, those which were assignable, and passed by delivery, and latterly in *this* Island only, those of every other kind. The principle however that the Courts have no cognizance of matters arising out of their separate jurisdictions, is still recognized in both Islands, as regards *crime*, which is

proved by the fact, that criminals who have fled from one Island to the other, and *vice versa*, and even when they have broken prison, whether before or after conviction, have on being pursued and captured, been liberated, by order of the Courts for want of jurisdiction : and although by the practice of the *Jersey* Court, persons are now liable to arrest for any kind of debt contracted in England, or elsewhere, out of this jurisdiction, and in default of bail (if they have no landed property *here*) committed to prison, yet in Guernsey, no person is liable to arrest under the same circumstances, until he shall have been residing there constantly a year and a day, and have acquired a legal domicile, save and except for Bills of Exchange, for which he is liable to be arrested there, immediately he lands in the Island. Thus, an inroad was made in the constitution of both Islands, but a greater one in Jersey than in Guernsey, and that by the authorities themselves. The fact is when the intercourse and commerce between England and the Island had become considerable, and debtors took refuge here, professional men, who were intimately allied to those in power, seeing the probable increase of business that would result therefrom, mooted the question from time to time, as to whether the Court was not competent to entertain such cases, until those in authority yielded the point, and thus one precedent gave rise to another, until it became recognized as established law, that the Court was competent to take cognizance of *civil* cases, arising out of the Bailiwick, provided the parties at issue were within it. They however left the question concerning *crime* untouched, and for the best of all reasons, because the prosecution of criminals brought no grist to their mill !

THE DIFFERENT COURTS.

The Royal Court is of chartered jurisdiction, and is of four distinct characters, called La Cour d'Heritage, La Cour de Catel, la Cour du Billet, and La Cour Extraordinaire or du Samedi.

La Cour d'Heritage held at two terms in the year, admits of no causes but such as respect inheritances, partitions of estates betwixt co-heirs, differences among neighbours about bounds, new disseizens and intrusions on other men's lands, pre-emptions between kindred called *Retrait Lignager* (*retractus consanguine* and *jus protimesos*) the property

of rents due for tenants or lands let in fee farm (*reditus fundiarius*) and other things of the like nature. It opens usually on a Thursday, with a great deal of formality, when the Governor, Bailli, Jurats, &c., enter the Court with the Royal mace carried before them and surrounded by a guard armed with pertuisans. The Bench must be full that day, nothing but sickness or absence from the Island, excusing a Jurat's non-attendance. Seven constitute a Court. All Gentlemen holding Fiefs of the Crown by that service called in records *Secta Curia*, &c., must attend on pain of fine. Some of those Fiefs being in the Queen's hands, the Governor answers for her Majesty. The Advocates renew their Oaths. The Prevots and Serjeants, who are inferior officers belonging to the revenue, attend to give an account of all forfeitures and other casual profits and emoluments accrued to the Crown, if such there be. Against the rising of the Court, there is a handsome entertainment provided by the Queen's receivers, where besides the Governor and members of the Court, those gentlemen holding Fiefs of the Crown, have a right to sit, and are therefore said in the *extent* and other records *edere cum Rege ter in anno*, that is, to eat with the King thrice a year. The Court sits every Thursday following, till the end of the term, the Jurats assisting by turn, three at a time.

2.—*La Cour de Catel* is held for deciding disputes about chattles, arrears of rent, &c. These last are cognizable for any term, short of forty years. Criminals are tried either in vacation or term time; seven Jurats must attend if the crimes be capital, unless the prisoner consents to be tried before a lesser number, and in other cases two are sufficient.

3.—*La Cour de Billet* is a Subsidiary Court to assist the Cour de Catel in matters of less moment, as arrests, distresses, &c.: arrears not exceeding ten years, are transferred to this Court. All causes are heard in order as they are set down in a billet or scroll affixed to the Court door, whereby all persons concerned, by inspecting that scroll, may know nearly when they shall be called, without losing their time in attendance. During term, the scroll often exhibits upwards of 300 causes, put down for hearing, though perhaps only 10 or 15 will be got through in a day.

4.—*La Cour du Samedi* or Saturday Court is another Subsidiary Court, but a branch of the former. In term time it is principally appointed for the Queen's causes, namely, rents due to the Queen, and those of the Jurats, who are not tied to the common rules of billet; out of term, for causes of brevity that will suffer no delay, as causes of navigation, contracts, breaches of peace, and others of daily occurrence.

TERMS.

Extraordinary or Saturday Court.—The Spring Term begins the first Saturday after the 11th April, and ends the 5th July. The Autumn Term begins on the first Saturday after the 11th September, and ends the 5th December.

Cour d'Heritage, or Court for Real Property—Opens on the first Saturday after the 4th of May, and on the Thursday preceding the 11th October.

CONSTITUTIONS OF KING JOHN.

The following document is considered the foundation stone of the civil and criminal Jurisdictions of the Island of Jersey and Guernsey. It has been questioned* whether they can be deemed anything more than a declaratory statute of a pre-existing system according to the custom or unwritten law of Normandy, or whether, in fact, such a statute, or a statute of any kind of that effect, ever issued from royal authority. The document is a mere list or schedule of sundry and promiscuous articles of polity and regulation. It bears on the face of it, no form, formality or style, usually characterising charters, statutes or institutes. It is headed, or rather superscribed "Constitutions and provisions, constituted by the Lord John, the King after Normandy was alienated;" but the people for whom they were intended, are not named, and the heading may be altogether fortuitous: otherwise than in that heading the King's name does not appear; the place of emanation is not stated, nor is the date given: the King's signature is not to it, neither is that of any councillor, secretary, or other functionary, to authenticate it: no seal is appended or affixed to it; neither the great seal, nor the privy seal; nor any other mark whatsoever, to give it the

* Jersey and Guernsey Magazine, p. 311.

force of law ; it is not addressed to any authorities whatever, in or out of the Islands : it is not registered in the archives, either in Jersey or Guernsey ; and the source whence it may have originally been produced, is utterly unknown, as it bears no mark of its having been procured from any of the record offices in England. The original is not extant, and is not *known* even to have been in existence : it bears the appearance of a compilation, more than that of anything else, at an epoch *certainly posterior to King John's death* : it is a sort of memorandum of an uncertain tradition. Here it is :—

The constitutions and provisions constituted by the Lord John, the King after Normandy was alienated.

I. He hath appointed twelve jurats coronatores, or jurate coroners, for the preserving and defending all pleas and rights appertaining to the crown.

II. He hath constituted and granted, for the security of the island, that the bailly shall, for the future, by the view of these said coronatores, hold pleas, without writs of novelle disseisin, of mort d'ancestor, of dower, within the year ; of fiefs in pledge or mortgage, and marriage incumbrance, at all times.

III. These coronatores are to be elected from among the natives of the island, by the ministers of the king, and the chief inhabitants ; so that if either of them shall die, or be dismissed from that post, for illegal conduct, another shall be substituted in his place.

IV. These magistrates, so chosen, shall swear, without reserve, to maintain and preserve the rights of the king, and of their country.

V. These twelve, in the absence of the justiciers, and together with them, when they shall come to the island, shall judge of all cases whatsoever, arising in that place, except in such as are too arduous for their decision ; as are those of traitors to their sovereign, or of men who have lain violent hands on the magistrates and officers of his majesty, during the exercise of their duties.

VI. The said twelve are to ascertain the fines and amer-
ciaments of all offenders before mentioned, except in the cases too arduous, or in others, where according to the customs of the island, redemption appertains entirely on the will of the king, and of his court.

VII. If the king may be willing to be certified of the record of any plea, determined by the justiciars and the twelve, the justiciars, with the twelve shall make the record ; and of pleas determined by the bailly, and the twelve, they shall conjointly make the record.

VIII. That no plea begun before any of the justiciars in the island shall be adjourned to any other place, but altogether determined within that isle.

IX. No man shall be compelled to answer concerning his free tenement, which he has peaceably held for a year and a day, without a writ obtained from the king's court of chancery, expressly mentioning the tenant and the tenement.

X. That no man condemned for felony out of the Island, shall forfeit his inheritance within it, but that it shall descend to his heirs.

XI. If any man hath forfeited his rights, and abjured the island, and the king shall afterwards grant him a pardon, and he shall return to the isle within a year and a day after his abjuration, he shall be restored, in full right, to his heritage.

XII. No man ought to be imprisoned in the castle, unless in criminal cases, touching life or limb, and this by the judgment of the twelve coronatores, but in other free prisons, designed for such purposes.

XIII. The King shall have no receiver in the Island, but by the election of his fellow-countrymen.

XIV. The Islanders ought not to answer before the justiciars appointed for holding the assize, or other pleas, until a transcript of their commissions, under the king's seal, shall be delivered to them.

XV. The justiciars appointed by the King's commission, for holding the assizes in the Island, ought not to continue them beyond the space of three weeks.

XVI. The Islanders shall not be compelled to come before the said justiciars, after the time aforesaid is elapsed.

XVII. They shall not be obliged to do homage to the King, until he shall come into the Island, or the duchy of Normandy ; or till he shall appoint some person, by his letters, to receive their homage in his name.

XVIII. It is constituted for the defence and preservation of the Island, and the castles, and chiefly because they lie so

near the powers of the King of France, and of others, their enemies, that all the ports be well guarded; and the King hath commanded that guardians of these ports be appointed, that no injury may happen to him, or to his subjects.

Besides these heads, there were some in relation to the duties of wine, and other merchandise imported, the diminution of which was obtained by Philip de Aubigny, governor of the Island, in the reign of Henry the Third. By his interposition there was also granted a confirmation of the charter, and the addition of a very few articles, respecting the prohibition of carrying salted fish to the Normans and obliging the fishermen to carry their produce to market, in the island, three days in the week.

THE BENCH AND THE BAR.

Considering the jurisdiction of the Court extends to all criminal, civil, and mixed causes, with slight exceptions; and that great and important interests concerning life, liberty, and property, are at their disposal, it is necessary to devote a chapter on this subject, with the view to elicit the qualifications of those who administer the laws of the country. We shall begin with

THE BENCH.—Sir John De Veulle, Knight Bailiff, only son of John De Veulle, Esq., late Greffier of the Court, was educated for the Bar, and admitted a member, but rarely, if ever, practised. He was introduced to the notice of the public as a fit person for the bench, by his then intimate friend, the present Solicitor-General, and was elected Jurat. Having subsequently married a niece of Lord Chief Justice Tindal, he was in the early part of 1831, on the resignation of Sir Thomas Le Breton, (who had recommended his son, the present Attorney-General, as his successor) through the influence of his Lordship's family, appointed Bailiff of the Island. Sir John is said to be a very worthy man in his private character, but does not, by any means, possess adequate qualifications for the very responsible situation he holds. He is but an indifferent lawyer, a poor reasoner, and a worse speaker. As prolocutor of the legislature, his duties are confined merely to gathering the votes; hence it is not to be wondered at, that since his appointment, his country has not derived a single benefit from his labours. He is nephew of

Philip De Carteret, Esq., Jurat, and cousin to the Registrar of that name. Philip Maret, Esq., (D'Avranche) Lieut.-Bailiff, father of the late Advocate Maret, (who never pleaded but one cause, in which he stated his client to be guilty, though the Jury afterwards found her innocent) was originally employed in the Newfoundland fishery, afterwards admitted to the bar, and subsequently elected Jurat. His principal avocation is that of a farmer, living on his wife's estate; he is reputed to be tolerably versed in the laws of the Island, but is a strong partizan. Charles Le Maistre, Esq., originally in the fishery also, is said to possess attainments on a par with a country magistrate in England. Philip De Carteret, Esq., was formerly Greffier of the Court, next a Jurat, and afterwards Lieutenant to the present Bailiff: this magistrate is said to have signalized himself in the case of General Thornton v. Le Breton, by producing a judgment, which was written before the trial was heard. [See *Suspension and alteration of judgments.*] George Philip Benest, Esq., formerly in the Newfoundland Fishery, and afterwards elected a Jurat, is brother-in-law to E. Nicolle, Esq., another Jurat, and his general occupation is that of a farmer. George Bertram, Esq., was brought up to husbandry, elected Constable of St. Martin, and subsequently Jurat: he is said to be a far-sighted man, but a strong partizan. Nicholas Le Quesne, Esq., is a merchant, and was lately a partner in the banking firm of Nicolle, De Ste. Croix, D'Auvergne, Le Quesne & Co., is of moderate attainments, and better versed in commerce than in questions of Jurisprudence. Philip Le Maistre, Esq., was brought up as a country farmer, an occupation which he still follows: he was first elected Constable of Trinity, and afterwards Jurat: he is a man of very limited capacities. Edward Leonard Bisson, Esq., nephew of Charles Le Maistre, Esq., Jurat, was educated for the bar, but never practised: he is tolerably well read for a country magistrate, is reserved in his manners, and cautious in his judgments. Philip De Ste. Croix, Esq., Jurat, is a merchant of considerable opulence, who left the Island some years since with disgust for the political and judicial administrations of his country, and took up his residence in England. He is related to the Nicolle family. Edward Nicolle, Esq., is a merchant and banker, being managing partner of the firm before mention-

ed : was Constable of St. Helier some years since, and elected Jurat at the demise of his brother, P. Nicolle, jun., Esq. He is a man shrewd in his intentions and firm in his purposes. Philip Winter Nicolle, Esq., son of the late Jurat, is a merchant and large ship-owner, connected with the Newfoundland Fishery. He was formerly Centenier of the Town of St. Helier, in which he won the good opinion of his countrymen, and is a man of respectable parts. Thomas Duhamel, Esq., is a merchant and ship-owner, formerly banker, and also Constable of the Town of St. Helier, which office he filled some years, and afterwards Collector of the Impost. He is considered somewhat intellectual, and a pretty good orator.

CROWN-OFFICERS.—Thomas Le Breton, Esq., Attorney-General, was educated for the Bar, and is the eldest son of the late Sir Thomas Le Breton, Knight, Bailiff, and nephew to the late Dr. Hue, Dean of Jersey. He is reputed to be a well-informed man and a sound lawyer. J.W. Dupré, Esq. Solicitor-General, cousin of the last named, and son of Dr. Dupré, formerly Dean of the Island. He was originally a midshipman in the Navy, and having been made a prisoner of war, he improved his education during that period. On his return to Jersey, he was admitted to the Bar, and afterwards appointed Crown Officer. He is well versed in the laws and customs of the country, and is perhaps the best read man in the Island. Matt. Gossett, Esq., Viscount ; this gentleman performs his duty by Deputy, and lives in England ; hence we know nothing of him. Philip Le Gallais, Deputy of the last named, is a scrivener of the Royal Court and Notary Public, said to be in partnership with Hugh Godfray, Esq., another scrivener and Denunciateur ; they both execute processes issuing from the Courts, and practice as Solicitors, and reap thereby a better harvest than all the other professionals put together. He is a shrewd man, and is connected by family ties with several members of the Court. Francis Godfray, Esq., Greffier, was originally apprenticed to a carpenter, and afterwards put with the late Hugh Godfray, Esq., Denunciator, under whom he acquired his acquaintance with the usages of the country. He possesses a respectable share of talent, and is allied to the last named. He is Clerk and Treasurer of the States, and Member of the Banking firm of Messrs. Godfray, Sons & Co. John Aubin, Esq.,

Denunciator, was also an *élève* of the late Hugh Godfray, Esq., and late partner with his son, John Godfray, Esq., scrivener of the Royal Court. He is usually called *Gentleman* Aubin, to denote his urbanity of manners in performing the disagreeable duties of his office. Hugh Godfray, Esq., Denunciator, is the eldest son of the late Hugh Godfray, Esq. He is a scrivener, and member of the banking firm of Hugh Godfray, Sons, & Co.

ADVOCATES.—John Hammond, Esq., the senior member, was educated for the Bar, and is a gentleman of respectable attainments in his profession: he is nephew of the late Sir Thomas Le Breton, and, of course, cousin to the Attorney-General. Francis J. Le Couteur, Esq., is son of the late Solicitor-General Le Couteur, and was educated for the Bar, but does not practise. Francis Godfray, Esq., was brought up under his father, the late H. Godfray, Esq., and afterwards studied in Paris. He is a powerful orator, but no reasoner; and studies declamation rather than argument, calculating, no doubt, that the former is unfortunately better adapted for those whom he has to address. He is also a bencher of Lincoln's Inn, but has never practised in England; is brother to Denunciator Godfray, first cousin to the Greffier, and second cousin to another Advocate of the same name. John Aubin, Esq., is son of Denunciator Aubin, but having been only recently appointed, though by agreement he takes precedence of the next gentleman, he has not yet practised. Peter Le Sueur, Esq., was originally clerk to the Deputy Viscount, and afterwards studied in Paris: he is a close reasoner, a good lawyer, and bids fair to become eminent in his profession. James Godfray, Esq., is son of the Greffier, but having been very recently appointed, he has not yet practised.

SUBORDINATE EXECUTIVE OFFICERS.

The Subordinate Executive Officers of the laws are, first, the Constables, being one of the most distinguished persons in every parish for estate and other qualifications. Each parish sends one of these officers to the Insular Assembly, as their representative; they carry into execution the rules and orders of the Court, which are on some occasions verbally given, in others by warrant, and they have power

also of considerable extent and operation. Besides these, there are elected in every parish, two officers, denominated Centeniers. These are both invested with powers of the State also; for on occasions wherein the Constable cannot attend, one of them represents the parish, and has a seat in the Assembly of the States, not by delegation of the Constable, but by his own inherent right; and they discharge the duties of a Constable also, and assist him in the execution of those orders which are issued from the Court.

Every parish is divided into Vingtaines, or double tythings, and over each of these districts there presides a Vingtenier, who is obliged to assist the two officers just mentioned. To every parish there belongs a procureur or agent, who is to conduct those suits in law in which the parish may be engaged.

There are also twelve parochial *sermentés*, who are to aid the Constable or Centenier whenever it is required and to form an inquest on the bodies of those who are wounded, or die by violent means. All these are chosen by the parochial electors. There still remain some other officers of the Court, such as the prevosts, who carry writs and other orders of the Court, in civil causes, to those to whom they are directed. But these officers are not parochial, but dependant on the circumstance of a royal *fief* in the parish. If there be none, the prevost of that adjoining executes the duty in the other.

Exclusive of the officers belonging to the judicial Court, the Queen's Receivers have a seat therein, though no official business; they receive the Queen's revenues which arise from the tythes, wheat rents, fines imposed by the Court, and other dues and services; theirs, is an office of importance. King John imparted to the people the right of electing this officer, which was expressly confirmed by Edward the Third, but as all the royal incomes are given to the Governor, he has for a long time appointed the Receivers.

MODE OF PROCEDURE BEFORE THE JERSEY COURT.

The days of Court are named by the Bailiff, and the Jurats attend in turns, beginning with the first magistrate on the first day of term, and taking the others in rotation. They are warned of their days by the Usher. On the opening of the

Court-house door, a bell is rung to notify that business is about to commence. When the Bailiff and Jurats are assembled and robed, the Clerk of the Court reads the following prayer, the Jurats turning their backs to the audience:—

“In the name of God, who has made heaven and earth. Amen.

“Eternal and Almighty God, sole Judge of the universe, who hath no regard for the appearance of persons, and who hast forbidden all Judges to receive goods and presents to deviate from the path of equity, we beseech Thee so to guide this present assembly by Thy Holy Spirit, that they being possessed of the gifts of discretion and prudence, they may be able to judge justly, so that the good and the innocent may be upheld and protected, and the wicked punished and discomfited, in order that the world may know that the sceptre of Thy word is planted in the midst of us, and that thou reignest among us, through the merits of our Lord and Saviour Jesus Christ, in whose name we pray, saying, Our Father, &c.” [Here follows the Lord’s Prayer.]

This having been read, business now commences. If it be a Civil Court, the Clerk hands up the table of causes hung at the Court door, to the Bailiff, after which the causes are called in the order in which they are set down. This table is prepared by the Greffier, and is affixed at the door of the Court-house one hour before the sitting commences. It contains the names of plaintiffs and defendants, which is given in by the Attornies one day previous to the day of hearing.

In ordinary cases, the preliminary process, is a summons, excepting when the defendant is expatriable, and then he is held to bail on a writ or Provisional Order. In actions for compensation in damages, it is a Remonstrance or petition, and for fulfillment of a contract, an Order of Justice. Summonses for a party to appear before any of the Courts to answer an action are signed by the Ecrivains or their clerks, or any other person; are served by the Prevost for the parish in which Defendant resides, four clear days exclusive of Sunday and the days of serving and hearing (excepting for the Courts of Heritage); they stand good for three sittings of the Court, but if the cause is not brought to a hearing on either of those days, the summons must be renewed; those

for the *Cour d'Heritage* fifteen clear days, exclusive of the one for hearing. As regards the latter, the *Code* says: "In order to avoid useless delays which shall retard the issue of suits and the inconvenience which it occasionss, the summonses or *interpolations* in matters hereditary, shall be served at least fifteen days before the Court day, and shall contain, particularly the substance of the contest, the names of the parties and the day of the month, for which appearance is made and no frivolous circumstance: and the defendant shall briefly summon his Partners or Securities, who shall call theirs and the latter also in case they have any, but there shall be no delay allowed to call witnesses when they shall be in the island, nor other default before judgment. Persons who shall have been duly summoned to appear at a view of arbitration, or such other solemn appointment, and in whose absence they cannot be held, shall be subject to the expenses of such appointment." Summonses for witnesses are signed by the Denunciaotrs and served by the Prevost one or two days previous to the day of appearance: these are good for three Court days, after which suitors must send them afresh: they must have their causes inscribed on the scroll or table conformably to the law of 1835, which says "at the *Cour d'Heritage, de Catel, du Samedi, et du Billet*, there shall be two tables made by the Greffier, the first for causes with witnesses, the second for other causes."

When a cause or action is brought forward, a copy of the proceeding having been served on the defendant, by an officer of the Court, the case is stated by one of the advocates—(whom it is absolutely necessary to employ)—and whose fee is often much more than the sum to be recovered. If the demand is contested, the matter is sent to proof, on which the case is summoned afresh, for the witnesses to appear. When the Advocates have finished their pleadings, the Bailiff does not sum up and deliver what has been attested and argued, like the Judges in England, nor explain the laws and customs of the Island, in any case, that being the business of the Advocates, nor does he give his opinion before he has asked those of the Jurats. The Magistrates alone deliver their sentiments on the trials which are brought before them, and a majority determines the suit. When this is done, the Bailiff assesses their different opinions, and pronounces that of

the majority, or if equally divided, gives his casting vote, which becomes the judgment of the Court. If defendant neglects to answer, when the cause is called, a provisional judgment is rendered *défaut aux biens*. He is next summoned by one of the denunciators, and if he neglects to answer or pleads to the cause and is cast, the judgment is made absolute, *condemnation a la demande et aux frais*. Then an attachment is issued on his person or his goods and chattels, on which defendant is summoned again by one of the denunciators to see the attachment confirmed, which if against his person, an act of prison issues, and if against his goods, plaintiff can proceed to levy and sell. At the ordinary Court, which is always held on a Saturday, and called *la Cour du Samedi*, two Jurats with the Bailiff or his Lieutenant, are sufficient for the decision of causes, but with an appeal to the Court of the greater number of Jurats, which is called the *Corps de Cour*, or Full Court, composed of no less than seven Jurats, which generally includes those who heard the cause in the first instance, and from their decision, in matters of considerable importance, there is an ultimate appeal to the Queen in Council. In this case, it is necessary that the evidence of witnesses be taken on oath before the Court, and reduced to writing, and lodged in the office of the officer of the Court called the Greffier. [See *Appeals to the Privy Council, regulation of.*] In civil causes, the Jurats are to be considered in the light of both jurors and judges; but in criminal cases, there must be the intervention of two juries, somewhat resembling the practice of the English Courts; one a petty jury, called *l'Enditement*, finding the bill of indictment, and the other, a grand jury, called *la Grande Enquête*, trying that indictment.

Prisoners are tried in vacation as well as in term. The appointment of a day for hearing causes before the Full Court, rests with the Bailiff. After a cause or an accusation has been sent to proof, the parties must give in a list of their witnesses, which they cannot augment or diminish: nor can a defendant, under any circumstances whatever, bring before the Court a witness whom he may afterwards discover, though in all human probability his evidence would exonerate him from an alleged offence. Witnesses are summoned by the sheriff and must appear under pain of imprisonment. If they

are sick and unable to attend, they must be essoined ; and if dangerously ill, or are about to leave the country, their evidence may be secured by moving the Court to grant leave for their depositions to be taken in writing by the Viscount or his Deputy, and those depositions are admissible at the trial. The Court possesses no power to summon witnesses from England, nor can it issue a commission to take evidence out of the Jurisdiction.

The Attorney General carries on all criminal prosecutions, and as the laws of the country do not permit the Bailiff to act for the prisoner, or to give his opinion before the Jurats have opined and determined, every prisoner is allowed the benefit of an advocate. The Bailiff seldom sums up the evidence, nor do the Jurats offer their sentiments thereon ; and what is remarkable the Bailiff never explains the law to the Jury : the Attorney-General for the Crown and the Advocate for the prisoner do this, hence it is often erroneously laid down, and as often erroneously adopted by the Jury ; for it must be observed that the latter are allowed to judge the *law* as well as the fact : it therefore follows, that if the Jury should misconceive the law, either to the prejudice of the Crown or of the prisoner, inasmuch as no motion for a new trial is ever granted, the injustice done in such a case, is a wrong without a remedy. The Jury are sworn to give a verdict to the acquittal of their consciences, and not according to the evidence, as in England : hence the great latitude which their oath allows them is prejudicial to public justice, both as regards the prisoner and the crown : for it might happen, that a verdict will be given against a prisoner, not only unsupported by the evidence, but *contrary* to it ; by which he may be convicted of a crime he is innocent of ; in which case, there is no remedy, as there is in England, where a prisoner's counsel can move for a new trial, either on the ground of a misdirection of the Judge, or of an improper verdict. We do not pretend to say that any capital execution *has* resulted from this latitude given to the Jury, but the bare possibility of it, is enough to harrow up the soul, and calls loudly for redress. To find a person guilty, seven out of thirteen of the Petty Jury, and twenty out of twenty-four of the Grand Jury, must concur in the verdict ; which is usually written on a piece of paper and

handed to the Chief Magistrate by the foreman. It is generally considered that this is more humane than an unanimous verdict of twelve, but we think otherwise. The English law is so merciful, that no man's life can be taken from him, whilst the least doubt exists of his guilt, hence if only one of the Jury refuses to concur in the verdict of Guilty, his life cannot be taken : whereas in Jersey a prisoner may be convicted and hung, notwithstanding the strong doubts which must exist, when four persons find him innocent. After the Jury have received their charge, they retire to a consulting room, accompanied by the Deputy Viscount, who takes all the documents relative to the proceeding, and lays them before the members. He also remains at the door, to see that they have no communication out of the room. The verdict in Jersey is *pluto coupable qu'innocent, or plutot innocent que coupable* which may be rendered "Rather guilty than innocent, or rather innocent than guilty;" but sometimes a qualified verdict is given, such as finding the prisoner guilty of the facts charged, but not of the motives; or a verdict which modifies the accusation, or in other words, one that finds the prisoner guilty of a crime which he is not charged with. [See *Accusation, Mitigating of.*] Sentences are pronounced by the Bailiff, and if capital, both he and the Jurats put on their hats, and the prisoner kneels before them whilst sentence of death is passed. It runs as follows:—"That the prisoner be taken to the prison in irons, and delivered over to the public executioner; That he be taken from thence with a halter round his neck to the place of execution, and there be hanged by the neck till he be dead, and that his estate and effects be confiscated to the use of the crown or the Lord of the Manor." The Governor has no authority to suspend the execution of a convict until the pleasure of her Majesty be known, nor has the criminal a right to appeal from the insular tribunal to the Mercy of the Queen in Council; but as the laws of Jersey do not explicitly distinguish between Manslaughter and Wilful Murder, and both are equally capital; it is provided from above, that in the former case the Court shall not proceed to sentence until the fact be laid before her Majesty.

THE REVENUE.

The public Revenue of the Island is chiefly derived from an Impôt on Wines and Spirits, under the administration of the Lieut.-Governor, Bailiff and Jurats, according to the conditions of the Patent, by which authority it is levied. Another source of the revenue is the Anchorage and Harbour dues, the proceeds of which are under the administration of the States, and are generally applied to the repairs and improvement of the harbours: and lastly, the licences of publicans, the principal revenue from which arising in St. Helier, is applied to the lighting of the Town with gas, and that of the other parishes to local purposes. The first grant for the impôt, which was then one sous per pottle, was in 1615, and was confirmed by Charles the First; but the distractions of the kingdom prevented its receiving the authority of the great seal till 1649, when it was renewed by letters patent from Charles the Second. The duties levied under this patent are on Portuguese, Spanish and Italian Wines, two pounds ten shillings per pipe, on French and Rhenish Wines, two pounds per pipe, and on Spirits one shilling per gallon. There are about 120,000 gallons of spirituous liquors per annum, consumed in the Island, the population of which is nearly 40,000 souls. Publicans who sell wines and spirits, pay for their licences, £5 per annum, with a fee of 6s. to the Greffier. Those who only sell Beer or Cider pay 25s. per annum. There are about 200 licenced publicans in the town of St. Helier, with a population of 18,000 and about 300 in the country parishes.

The whole principle of taxation which is politic and just, speaks its own praise and requires no eulogy. The amount raised is trifling, and no portion of it is laid upon the necessities of life, or bears upon the wants of the poorer classes. A state is happy, when its situation is such as to admit of this system, so conducive to the interest and welfare of its people, and to the increase and prosperity of its commerce; and which adding to the enjoyment of the natural advantages of Jersey, causes it to be resorted to by strangers, and contributes to heighten that attachment to his soil which is felt by every native.

The agents for collecting the Revenue formerly received a commission of four per cent., but now the principal Collector receives £120, and his assistants £80, per annum. They are annually nominated by the Governor, Bailiff and Jurats, and continue in office during pleasure. The present collectors are

MR. CLEMENT SOREL, } for St. Helier's.

MR. P. LE GEYT,

MR. P. DEAN, for St. Aubin's.

MR. P. WARNE, of the Customs, Auditor.

The following is a copy of the Letters Patent of Charles the Second :—

Charles the second, by the Grace of God, King of England Scotland, France and Ireland, defender of the faith, &c., to all whome these presents shall come greeting, know yee that wee greatly tending and affecting the good and welfare of our loveing subjects, the inhabitants of our Isle of Jersey being desirous that they may be Instructed in good Lettres and that Learning and other good and profitable Arts and Sciences may Florish amongst them, as alsoe that their Poore may be maintayned by employment in some lawfull vocation, and that trade and traffique may increase amongst them, and upon their humble petition lately tendered to us by the Governor, Bayliffe, and other Officers, and Inhabitants of the said Island. Consideration thereof had in Councell as alsoe of a Warrant of our late Royall Father of blessed memory in the third yeare of his Raigne, Directing his letters to be made Patents, and granted upon a like petition, formerly presented by the States of the said Isle of our especiall grace certaine knowledge and meere motion and with the advice of our said Councell, have given and granted and by these presents for us our heires and successors, doe give and grant unto the Bayliffe and Juratts of our said Isle for the time being, and their successors, or by what other name or names of incorporation soever they are or have been called or knowne full power, Lycense and authority from and after the feast of Saint Michaell the Archangell, now next comeing to aske demand, leavy, collect and receive, of and from all and singular Merchants Treaders and others; person and persons, whatsoever that shall import or bring any wine or wyne, cyder or apples of the kindes or sorts hereafter mentioned from any parts beyond the seas, into the said Isle of Jersey,

the severall rates, dutyes, and sumes of money followeing, that is to say—for every tunne of French or Rhenish wines, twentiethy foure Livers tournois, for every Butt or Pipe of Canary or Spanish Wines, fifteen Livers tournois, for every Pottle of Brandy twelve sols tournois; and for every tunne of cyder brought of Normandy or Brittany, or any other forreigne parts, foure Livers Tournois, and for every quarter of apples, eight sols tournois of currant money of the said Isle, and soe for every greater or lesser proportion of wine, cyder and apples respectively, and wee doe alsoe hereby for us, our heires and successors, give and grant unto the said Bayliff and Juratts and their successors, all summes and summes of money, benefits and profitts whatsoever, which shall from time to time arise and grow and be made received and perceived upon any demisse or lease to be made thereof, or by the collecting and receiving the same by themselves or their Deputyes according to the true meaning of these presents, to have and to hold the said summe and summes of money, rents, profitts and commodities to the said Bayliffe and Juratts, and their successors to the uses, intents and purposes, hereafter in these presents expressed without any manner of accompt, recompense or allowance to us, our heires and successors, to bee therefore or by any use thereof rendered paid, made or given, or otherwise then according to the true intent and meaning of these presents, and for the more plaine declaration of our intent and purpose. Wee doe hereby signifye and make known, and our Expreste Command and pleasure is, that two thousand Livers tournois by the yeare, part of the Revenue hereby arising shall be paid by the said Bayliffe and Juratts, and their successors, to the Masters and Vshers of such Schoole, Colledge, or Academy, as is now intended to be built in the Towne of Soint Helier, within our said Isle of Jersey, by our trusty and well beloved Councillor, Sir George Carterett, Knight and Baronett. vice Chamberlayne of our household, in such proportion as hee shall appoint and direct, hee the said Sir George Carterett, having already at his owne expense and charge undertaken a considerable part of the Building and Endowment thereof, and that the said yearley summe of two thousand Livers tournois, shall goe towards the building and erecting of the said Schoole, Colledge or Academy, untill that the same shall

be finished, and Masters and Vshers therein settled, and alsoe that three hundred Livers turnoies, part of the remainder of the said revenue hereby ariseing, shall be yearely and every yeare imployed for the erecting and building of a convenient house, and for and towards the raiseing and maintayning of a Stoke of Money to bee used for the sitting to worke and orderly governing of Poore and idle people, the relief of decayed Tradesman and the correction and restraint of Vagabonds and Beggars within the said Isle, and whereas wee are credibly informed that the Inhabitants of the said Isle have long intended to erect and build a peere in Saint Albans near the said Isle, for the better security of Marchants and others that shall repaire thither for trade and Commerce with the inhabitants thereof, and that as well in the makeing and building thereof as also in the mainteynance of the same being perfected divers great summes of money must of necessity bee expended. Wee doe alsoe declare that our expresse command and pleasure is that all the rest and residue of the said revenue hereinbefore mentioned, to be hereby granted subject to the charges and payment to bee made as aforesaid, shall be by the said Bayliffe and Juratts of the said Isle and their successors from tyme to tyme, erection of the said Peere, and when the same shall bee fully employed and expended for and towards the full and perfect made and perfected, then one moyetie of the said rest and residue of the said Revenue shall bee from time to time employed and disposed for the improvement and advantage of the said schoole, colledge or academy, and that the other moyetie thereof, shall be from time to time employed and disposed for such other publique uses of and for the said Island as the Governor, Bayliffe and Juratts thereof, for the time being or the major part of them, whereof the Governor and Bayliffe to be two, shall from tyme to tyme thinke fitt an direct and for a further supply towards the building and maintayning of the said Peere, and for the better helpe and assistance of the said Inhabitants in doeing the same and their encouragement to proceed therein. Wee have alsoe of our more especiall grace and meere motion given and granted, and by these presents for us our heires and successors doe give and grant full power and lawfull authority unto the said Bayliffe and Juratts and their successors, that they and

their successors shall and may from tyme to tyme for ever from and after the said feast of Saint Michael the Archangel now next comeing, law fully and freely by themselves or by any others authorised by their demand, take leavy, perceive and receive for and towards the building and repaireing of the said Peere from tyme to tyme of and for all and singular weares, merchandizes, shippes and other things from tyme to tyme, imported and to be imported and brought into the said Isle, such and the like summe and summes of money and Customes, commonly called Petty Customes, and in the name of Petty Customes, as the Bayliffe and Juratts of our Isle of Guernsey have hithertoe lawfully demanded, taken levied and received of and for the likeshipps or merchandise imported or brought into that Isle, for the mainteynance and repairs of their Peere there, and for the better and more effectually raising and settling the revenue hereby appointed to be raised. Wee doe further declare our will and pleasure to be, and we doe direct and appoint that the management and disposall thereof for the ends and purposes aforesaid, shall wholly remayne and be in the Bayliffe and Juratts of the said Isle, and their successors for the tyme beeing with the advice and approbation of the Governor of the said Isle, and that nothing shall be acted therein, without the advice and consent of the said Governor and Bayliffe and Juratts or the major part of them, whereof the Governor and Bayliffe for the tyme beeing shall allways be two subject nevertheless, and always reserving the liberty and authority hereby given to the said Sir George Carterett as aforesaid, and to the intent that this our pleasure may be the better effected, and that the whole benefitt of this Revenue maye from tyme to tyme be employed to the uses before particularly expressed for the good of the Isle, according to the true intent and meaning of these presents without diversion or diminution. Wee doe by these presents give unto the said Bayliffe and Juratts of our said Isle of Jersey and their successors, full power, licence, and authority from tyme to tyme as they shall find itt most expedient to demise, and lett to forme the benefitts and profits hereby to arise or any part or parts thereof, to such person or persons as will give most for the same, or if they shall thinke fitt to have and keepe the management of the same in their owne hand, then to depute, nominate, and appoint such subordinate officers, collectors and receivers, for

the leveing and collecting thereof, as they shall thinke necessary and convenient, and all persons which shall bee employed as well in the receipt of the rent or revenues thereupon arising, as alsoe in the disbursement of the same to the uses before specified, shall from tyme to tyme yearly make accompt of their receipt and disbursement of the said rentes and Revenues in the publique Assembly of the States of the said Isle, which accompt also shall be subject to the examination of the Governor, Bayliffe and Juratts or the major part of them, whereof the Governor and Bayliffe for the time being to bee two, and a true cōpy thereof shall be yearly transmitted to the Clarke of our Councill in attendance, to the end that the same may bee inspected by us in Councill; and iff, in the execution of any matter to be committed to the charge or care of any person or persons in or about the premises, any offence or fault bee in them found by the concealing, diverting, or imbezzeling any of the rents or profits hereby arising, so that the uses and purposes before mentioned, are defrauded or defeated. Our Will and pleasure is that such person or persons soe offending, shall be subject to such fine, imprisonment and punishment, as unto the said Governor, Bayliffe, and Juratts, or the major part of them upon due consideration of the quality of the offence shall seem just and convenient, and which may be inflicted by them or any of them, according to law. Provided all ways and our expresse will and pleasure is that it shall and may be lawful to and for the said Bayliffe and Juratts, and their successors for the time being, or the major part of them, with the advice of the Governor or Lieutenant of the said Isle for the time being, to convert and employ soe much and such part or parts of the duties and summes of money hereby granted, as they shall thinke necessary for and towards the providing a Magazine of arms for the defence of the said Island soe as the money to bee for that purpose employed doe not for the first two yeares exceed the moyetie of the whole revenue and profit hereby intended to be granted, and further, that it shall and may be lawfull to and for the said Sir George Carterett with the advice and approbation of the Bishop of Winton for the time being, to forme and establish such lawes, constitutions and ordinances, for the good and orderly government and regulation of the schoole, college, or academy aforesaid, as shall bee thought fitt and

agreeable to Justice, any thing herein before contained to the contrary notwithstanding, although express mention of the true yearly value or certainty of the premises, or any of them, or of any other gift or grant by us or by any of our progenitors or predecessors, heretofore made to the said Bayliffe and Juratts of the Isle of Jersey and their successors in these presents is not made, or any statute, act, ordinance, provision, proclamation or restriction heretofore had made enacted ordeyned or provided, or any other matter cause or thing whatsoever to the contrary thereof, in any wise notwithstanding. In Witness whereof, wee have caused these our letters to bee made patents. Witness ourselfe at Westminster, the fourteenth day of April, in the one and twentieth yeare of our Raigne.

By Writt of Privy Seale, PIGOTT.

ECCLESIASTICAL COURT.

The spiritual jurisdiction is committed to the Dean, (and in his absence to the Vice-Dean) who holds an Ecclesiastical Court, observing the same terms as those for secular affairs, in which he is assisted by the Rectors of the different parishes. Suitors have the right of appealing after judgment to the Bishop of Winchester, and in case of a vacancy in that see to the Archbishop of Canterbury: and cases thus brought before them, they are in person obliged to attend to; their decision is *said* to be irreversible, and that no ulterior proceedings are allowed.

The Deanery is in the gift of the Crown, and it is always accompanied by one of the parochial benefices, which are now in the patronage of the Governor of Jersey, though for some time after the seizure of Church property by Henry the Eighth, the right was exercised by the King; previously to which it belonged to the Abbots of Normandy, who also claimed and received as their due, a great proportion of the tythes. Pluralities are interdicted by the Ecclesiastical canons. The laws are all founded on the canons of James the First, which were framed by the Archbishop of Canterbury, the Bishop of Lincoln and the Bishop of Winchester, and received the Royal assent in the year 1623, under the sign manual. These canons granted to the Dean the power of bestowing licences for marriage—the entry and probate of wills which must be registered in his office and approved

under his seal, and letters of administration of the goods of intestates dying without heirs of their body to the next of kindred, and to exercise the power of a consistory Court. As the Island is in the diocese of Winchester, under which see it was placed by an Order in Council, dated 11th March 1568, the Bishop exercises the prerogative of consecrating places of worship, administering the rights of Confirmation, Ordination and granting institutions to livings on the presentation of the Governor.

MEMBERS OF THE COURT.

JUDGE.—The Very Revd. Francis Jenne, D.C.L. Dean of Jersey.

ASSESSORS.—Revds. John Mallet, Rector of Grouville, George Duheume, M.A. Rector of St. Lauren's, John Thomas Ahier, Rector of Trinity, George Balleine, Rector of St. Martin, Ph. Filleul, M.A. Rector of St. Peter, and Vice-Dean, Philip Dupre, Rector of St. John, Ed. Durell, M.A. Rector of St. Saviour, Ph. Aubin, B.H. Rector of St. Clement, Philip Payn, Rector of St. Ouen. Edw. alle, M.A. Rector of St. Brelade, Philip Guille, M.A. Rector of St. Mary.

GREFFIER.—John William Dupre, Esq.

ADVOCATE-PROMOTER.—Francis Godfray, Esq.

ADVOCATE.—Philip Messervy, Esq.

APPARITOR.—Jos. Jandron.

SUMMONING-OFFICERS.—The Clerks of the 12 parishes.

CANONS AND CONSTITUTIONS.

The following are the canons and constitutions which received his royal assent, June the 30th. 1623 ; and which are observed to this day.

JAMES by the grace of God, king of England, France, and Ireland, defender of the faith, &c. To our right trusty and well beloved counsellor, the reverend father in God Lancelot bishop of Winton ; and to our trusty and well beloved Sir John Peyton, knight, governor of our isle of Jarsey, and to the governor of the said isle for the time being ; to the bailiff and jurats of the said isle for the time being ; and to the officers, ministers and inhabitants of the said isle for the time being ; to whom it shall or may appertain. greeting. Whereas we held it fitting heretofore, upon the admission of the now dean of that island unto his place, in the interim, (until we might be

more fully informed what laws, canons, or constitutions, were meet and fit to be made and established for the good government of the said island in causes ecclesiastical, appertaining to the ecclesiastical jurisdiction) to command the said bishop of Winton, ordinary of the said island, to grant his commission unto David Bandinel, now dean of the said island, to exercise the ecclesiastical jurisdiction there, according to certain instructions signed with our royal hand, to continue only until we might establish such constitutions, rules, canons and ordinances, as we intended to settle for the regular government of that our island in all ecclesiastical causes, conformed to the ecclesiastical government established in our realm of England, as near as conveniently might be : And whereas also to that purpose our pleasure was, that the said dean, with what convenient speed he might, after such authority given unto him as aforesaid, and after his arrival into that island, and the public notice given of his admission unto the said office, should, together with the ministers of that our isle, consider of such canons and constitutions as might be fitly accommodated to the circumstances of time, and place, and the persons whom they concern, and that the same should be put into order, and intimated to the governor, bailiff and jurats of that our isle, that they might offer to us and to our council such exceptions and give such informations touching the same, as they should think good : And whereas the said dean and ministers did conceive certain canons, and presented the same unto us on the one part, and on the other part the said bailiff and jurats excepting against the same, did send and depute Sir Philip de Carteret, knight, Joshua de Carteret, and Philip de Carteret, esqs., three of the jurats and justices, of our said isle ; all which parties appeared before our right trusty and well beloved counsellors, the most reverend father in God the lord archbishop of Canterbury, the right reverend father in God the lord bishop of Lincoln, lord keeper of our great seal of England, and the right rev. father in God the said lord bishop of Winton, to whom we gave commission to examine the same, who have accordingly heard the said parties at large, read, examined, corrected and amended the said canons, and have now made report unto us under their hands, that by a mutual consent of the said deputies and dean of our island, they have reduced the said canons and constitutions ecclesiastical into such order as in their judgment may well fit the state of that island : Know ye therefore, that we out of our princely care of the quiet and peaceable government of all our dominions especially affecting the peace of the church, and the establishment of true religion, and ecclesiastical discipline, in one uni-

Moreover, they shall see that the pews and seats be well fitted for the conveniency of the minister and parishioners, and that with the advice and counsel of their minister; all this, out of the rents and revenues of the treasury of the church.

34. The said church-wardens shall be obliged to keep in a book, a good and faithful account of their disbursements and receipts, and of the use they shall make of the money of the treasury; which shall be published from time to time, according to custom, and that in the name of the said church-wardens, and procurators of the parish, who shall employ the said treasury in things necessary and convenient for the church, or the public good, governing themselves by the advice of the minister and chief of the parish in all things extraordinary which concern the said parish; and in case of public business, the assembly of the states shall prescribe to them what shall be found expedient for the common advantage; and before they quit their charge, they shall give notice to the parishioners that they may audit their accounts in Easter week, which accounts shall be signed by the minister and chief of the parish; and if any of the said parishioners, or others, refuse to pay the rents they owe to the said treasury, the said procurators and church wardens, or any of them, shall prosecute them by the ordinary ways of justice: but in case of any controversy about the said accounts, or of any abuse to be reformed, the dean and minister of the parish where the said controversy or abuse shall be, shall join with the bailly and jurats to determine the same as shall be found convenient.

35. The said church wardens during divine service on the Sunday shall search places suspected of gaming, and riotous practices; and having the constable to assist them, shall also search taverns, and tippling houses.

36. They shall be careful that there be no withholding or concealing of things appertaining to the church; they may also seize into their hands, or sue for the delivery of all donations and legacies mobiliary made to the church and poor, according to the laws of the country.

37. There shall be two collectors of the alms for the poor in each parish, who shall also discharge the place of sidesmen, and shall be chosen as the church wardens; and shall be sworn in court to behave themselves well in their office: and shall give an account of their administration twice a year before the minister and parishioners: viz. at Easter and at Michaelmas.

38. The clerks or sextons of the parishes shall be chosen by the minister and chief of the parish, of the age of 20 years at the least, of good life and conversation, able to read fairly,

distinctly, and intelligibly, and to write also, and somewhat qualified for the singing of the psalms, if it may be.

39. Their business is by ringing of the bell to call the people to divine service, and hearing of the word of God, at a proper and convenient hour, according to custom ; to keep the church shut and clean, as also the pews and pulpit ; to preserve the books, and other things belonging to the church whereof they shall have the custody ; to provide water for baptism, and to make such proclamations and denunciations as shall be enjoined to them by the court, or by the minister, and shall receive their wages and salaries by contribution of the parishioners, whether in corn or money, according to the custom of the country.

40. There shall be a schoolmaster in every parish chosen by the minister, churchwardens, and principal persons thereof, and after that presented to the dean to be licensed thereunto ; and it shall not be lawful for any to exercise this charge, not being in this manner called unto it, and the ministers shall take care to visit them, and exhort them to do their duty.

41. They shall use all painful diligence to teach the children to read and write, say their prayers, answer to the catechism ; they shall form them to good manners, shall bring them to sermon, common prayers, seeing that they behave themselves there as becometh.

42. The court shall be kept once a week on the Monday, and shall observe the same terms and vacations as the court civil.

43. At every session, in the beginning thereof, the names of the assessors shall be enrolled, the day, and the month, and the sentences read.

44. After judgment and sentence given in the principal matter, the costs of the parties, and the fees of the officers of the court shall be awarded by the ecclesiastical censure.

45. There shall be two advocates, or proctors, duly sworn to the court, to the end that the people may proceed formally and juridically, without confession or surprise. And the greffier, or register being also sworn, shall faithfully record the sentence which shall be pronounced, and shall give copy of the acts to such as shall require it.

46. The king's procurator, and in his absence, the advocate, may be present from time to time in the court, and there prosecute the censure and punishment of all causes of crime and scandal.

47. For executing or serving the citations and summons, the dean shall swear the clerks of the parishes, and an apparitor, who shall give a faithful report of their proceedings, giving also copies of the original citations and mandates to such as shall require them or in the absence of them to their domestics ;

said church-wardens, or (if they should fail in doing their duty) from the minister, of all offences and abuses which need to be reformed, whether in the minister, officers of the church, or others of the parish: and the said dean for the said Visitation, shall each time receive 40 sols out of the treasury of the church.

24. In case of vacancy of any benefice, either by death or otherwise, the dean shall give present order that the profits of the said benefice be sequestered, and that out of the produce thereof the cure be supplied; and also that the widow or heirs of the deceased be satisfied in proportion to the time of his service, according to the custom of the island, with such necessary deductions, as must be made for dilapidations, if there be any; and shall give convenient time to the widow of the deceased to provide herself with a dwelling; and shall dispose of the residue to the next incumbent, to whom the sequestrator shall be accountable.

25. In the same case of vacancy of any benefice, if within six months the governor does not present some person to the right reverend father in God the bishop of Winchester, or in the vacancy of that see, to the most reverend father in God the archbishop of Canterbury, to be admitted and instituted to the said benefice, then the dean shall give notice of the time of the vacancy to the said lord bishop or archbishop, as it shall happen, to the end they may give order for collating to the benefice: and when any shall be presented to them, the Dean shall give certificate of the behaviour and sufficiency of the party to be approved by them, before he be actually admitted by the dean into possession of the said benefice.

26. The dean shall have the entry and probate of wills which shall be approved under the seal of his office, and registered; he shall have also the registering of the inventories of goods mobiliary belonging to orphans, whereof he shall keep a faithful register, that he may give copies of them, whenever he shall be required. Moreover, he shall give letters of administration of the goods of intestates, dying without heirs of their body, to the next of kindred.

27. They that have the will in their custody, whether they be heirs, executors, or others, shall be obliged to exhibit and bring the same to the dean within one month; in default whereof they shall be convened into court by mandate, paying double charges for the compulsory; and the said dean shall have for the said wills, inventories, and letters of administration, such fees as are specified in the table made for that purpose.

28. All legacies mobiliary made to the church, ministers, schools or poor, shall be of the cognizance of the dean; but

upon any opposition made concerning the validity of the will, the civil court shall determine it betwixt the parties.

29. It appertains to the dean to have cognizance of all subtraction of tythes belonging to the church, of what kind soever they be, which have been paid to the ministers, and which they have enjoyed and have been possessed of forty years; and every person convicted of subtraction, fraud, or detention of the said tythes, shall be adjudged to make restitution, and pay the costs and charges of the party; and for the preservation of all and singular the rights, tythes, rents, lands and possessions beneficiary, there shall be a terrier made by the bailly and jurats, assisted by the dean and king's procurator.

30. The dean shall have power to make choice of a deputy or commissary, who shall execute and supply the place and office of the dean so far as his commission shall extend, of which there shall be an authentic act in the rolls of the court.

31. Every week next after easter, the minister and people of each parish shall choose two churchwardens, discreet men of good conversation and capacity, able to read and write if possible. If they cannot agree in the election, the minister shall have power to name one, and the parishioners another by the majority of voices; which two shall be sworn in the next court after, and there well admonished of their duty.

32. Their duty shall be to see that the churches and churchyards be not abused by any prophane exercises or actions, as also not to suffer any excommunicated person to come into the church, after the sentence has been published in their parish; and they shall be careful to present from time to time those that neglect divine service, and the use of the holy sacraments, and generally all delinquencies that are of ecclesiastical cognizance; which presentations they shall exhibit under their hands, nor shall they be constrained to present above twice a year.

33. They shall have care moreover to keep the church in good repair, and the churchyards well fenced; and to see that all things appertaining to the church, the administration of the word and sacraments, be provided and maintained from time to time, such are, a bible of the best translation and largest character, the book of common prayer both for the minister and clerk of the parish, a book of parchment to register the christenings, marriages and burials, a decent table to administer the holy supper, with a carpet to cover it during service, fonts for baptism, cups and vessels serving only to that use, table cloths, napkins, with a coffer wherein to keep the said utensils, a trunk or box for alms, a cloth and cushion for the pulpit, and shall also provide the bread and wine for the sacrament.

tories, exceeding the sum of 50 livres tournois, to the Dean, 20 sols : to the Greffier, 10 sols.—For an authentic copy of the said wills, letters of administration, or inventories, to the Dean, for his seal, 5 sols ; to the Greffier, 5 sols. For the *compulsoire*, to the Dean and Apparitor, 10 sols.—For publishing the banns of marriage, to the Dean, 30 sols.—For sequestering the profits of any benefice, to the Dean, 60 sols. For the induction of ministers, to the Dean, 30 sols.—For mandates and citations, to the Dean, 2 sols ; to the Greffier for writing them, 1 sol ; to the Apparitor for executing the citations, or mandates, 2 sols 6 deniers ; to the Clerk, for the citations which he shall deliver in his parish, 1 sol.—To the Dean for absolution of excommunication the lesser, 10 sols ; to the Greffier, 2 sols ; to the Apparitor, 2 sols 6 deniers. To the Dean for absolution of excommunication the greater, 20 sols ; to the Greffier, 5 sols ; to the Apparitor, 5 sols. In law-suits, the losing party shall pay the salaries and fees of the officers, and 3 sols for each act to the party, and to every witness produced in Court, 3 sols.—To the Advocates of the Court, for every cause they plead, 5 sols ; to the Greffier for every act of the Court, 1 sol. For every first non-appearance in Court, 1 sol. For contumacy, 3 sols.—According to the above, it is ordered that the Dean and his successors, or any officers who are now, and may be hereafter, *shall neither directly nor indirectly levy, exact, or receive from the inhabitants of the said island other fees and salaries than those which are specified in the above table.* Furthermore, it is ordained that whatever has been formerly practised or put in execution in the said island—in whatsoever cause it may have been—in consequence of any ecclesiastical jurisdiction, shall be annulled, that the said Dean or any of his successors may not be able to draw precedents in time to come contrary to, or beyond the tenor of, the said Canons now expressed and ordered ; but that every thing may be referred and limited to the contents of the said Ecclesiastical Canons and Constitutions. Likewise there shall be no impediment given by the civil magistrate of the said island to the Dean and his successors, in the peaceable execution of the said jurisdiction, *the contents of these Canons not being prejudicial to the privileges, laws or customs of the said island, which they are not intended to injure.*—Given under the great seal, etc., etc.

LAWS, CUSTOMS, PRIVILEGES, &c.

Absentees.—When a plaintiff is absent, a power of attorney to some person in the island, duly proved and recorded in the Court Register, must be produced, if required, before the cause can proceed to trial or judgment. Foreign powers of attorney under a notarial seal, and recorded are sufficient. It is held that the person acting under a power does not become individually liable for costs; the assets of his constituent only being subject for the same. A person who has never been in the Island can be sued if he has a power of attorney upon record, or effects within the jurisdiction, and no representative, because in the latter case an Administrator is appointed to him. The *Code* says: "In causes where there are several defendants or persons interested, if any of them shall be absent, the Viscount shall be appointed party for them, to answer peremptorily without delay for them in case of default." If an inhabitant of *Guernsey* be absent from the island, though only on a tour to Jersey, whatever may be his respectability or fortune, if a Court day intervene, his property is liable to be arrested, permission taken at Court to call over his name at the Church of the parish where he resides—he may be dispossessed of all his personal property, an auctioneer called in, not only to take an inventory of his effects, but to displace them, and all this without even the pretended creditor's making an affidavit for the supposed claim. All the favor allowed by law to the absentee is, that before the definitive sale of his property would be effected, the Queen's Sergeant would write to him, acquainting him what had taken place, a term varying in length, according to the distance of the place whither the debtor had gone, being allowed him for that purpose.

Accessories.—By the *English* law, he who kills another upon his desire or command is as much a murderer, as if he had

done it merely of his own head ; [Rex. v. Sawyer. 1. Rus. C. and M. 424. And see Rex. v. Dyson. R and R. C. C. 523 ; post 7385] for if a man encourages another to murder himself and is present abetting him while he does so, such person is guilty of murder as principal. [Rex. v. Dyson. R and R. C. C. 523.] Again, if two encourage each other to murder themselves together and one does so, but the other fails in the attempt upon himself, he is a principal in the murder of the other. [*Ibid*]. Now contrast with this the practice in *Jersey* : In the case of Louis Marin, charged with having rendered himself guilty of the crime of *murder* upon the person of Mary Ann Bethell, by aiding, assisting, and encouraging her to poison herself, by procuring her the poison, preparing it for her, giving and making her take it, from the effect of which she died, Monday, Nov. 16, 1835, or about that time, and in being, the said Marin, present, consenting, and participating in the poisoning, which caused the death of the said Mary Ann Bethell. The facts having been clearly proved, the Petty Jury unanimously found the prisoner "Rather Guilty than Innocent," which is tantamount to the English verdict of Guilty ; but the Grand Jury to which the prisoner appealed, having arrogated the right of judging the law as well as the fact, returned the following verdict :—"Mary Ann Bethell having formed and declared her intention of destroying herself, and having commenced alone to put it in execution, by taking landanum which she had found in a drawer by Mr. Barber's lodgings, and that without the participation of any other person—the Jury are of opinion that the accused is guilty of the crime of *Homicide* on the person of the said Mary Ann Bethell, *with circumstances of aggravation* !

Accusation, mitigating of.—It would appear by several verdicts that have been given, that a Jury having a prisoner in charge on a certain crime, may find him guilty of another, or rather of that in a modified degree, by judging the law as well as the fact. On the 15th of May, 1799, under the presidency of Lieut.-Bailli Pipon, Charles James Barrow, John Edward Lee, and Michael Chadwick, accused of *murder*, were found guilty of *manslaughter*, and condemned to an imprisonment. On the 20th of February, 1800, William Wood, accused of *murder*, was found guilty of *manslaughter*, and was pillored and banished. These two cases took place whilst Thomas Pipon, Esq., was King's Procureur-General. On the 8th of May, 1820, Thomas Thompson, accused of *murder*, was found guilty of having caused the death of Daniel Patterson, *without premedita-*

tion, and he was condemned to an imprisonment: this affair was judged under the presidency of Sir Thomas Le Breton; John Dumaresq, Esq., the son of Sir John Dumaresq, was then King's Procureur-General. On the 8th of October, 1824, Charles Le Sueur, accused of *murder*, was declared by the Petty Jury of St. Helier, guilty of *culpable homicide*, and was condemned to an imprisonment. On the 16th July, 1825, Daniel Gallagher, accused of *murder*, was found guilty of *manslaughter*, and punished accordingly. These three last prosecutions took place under the presidency of Sir Thomas Le Breton, and at the suit of the present Procureur-General. On the 7th of October, 1828, James Marshall, accused of *murder*, was found guilty of *homicide under aggravated circumstances*, and punished accordingly. In 1836, Louis Marin, indicted for *murder* was found guilty of *homicide under aggravated circumstances*, and was transported to New South Wales for life. In 1839, Amelia Spencer was indicted for *murder*, and found guilty of *excusable homicide*, and forthwith discharged! The two latter cases were tried under the presidency of Sir John De Veulle.

Acquittal.—A prisoner when acquitted is immediately set at liberty, and is not liable to any charge for fees, as the Queen's Receivers pay all expenses of the prosecution out of the Crown Revenues.

Actions are of a civil and mixed nature. The preliminary processes for debt are a summons before the *Cour du billet*, of an *Ordre de Provisoire* for the *Cour du Samedi*. Those for personal wrongs are instituted by a Remonstrance or an *Ordre de Justice*.

Acts of the Court.—These are records of the Judgments drawn up by the Greffier or his clerk, who makes a minute of the decisions of the bench, on scraps of paper, and places them on a file. These minutes in some cases are very brief such as *default*, when judgment has been given by default, and *a.b.c.* for *aux bien sans contredit*, when an attachment has been confirmed without opposition. When pleas have been put forth, the judgment is put down at length, and read to the Bench, and after it has been approved of, it is read aloud to the parties concerned. After the Court has broken up, these minutes are collected and framed into Acts and copied into the public records. These latter comprise four books, for the four Courts, and are lettered according to their kinds, and numbered according to their dates. The records are not signed either by the President or the magistrates, who give the judgments, nor are they verified in any manner whatever.

original minutes are not even preserved. Any person may obtain a copy of the record, by giving a day's notice, and paying for the same. The charge is for any number of words not exceeding 100, one shilling and sixpence, and for every hundred words above that number, one shilling. The amount is usually endorsed on the back of the document, and the authenticity of the copy is certified by the signature of the Greffier. The fees are payable in British sterling. If the record refers to a political cause and the applicant is one of the right stamp, the copy is furnished to him gratis.

Acts of the Court, suspension of.—Acts of the Court are sometimes suspended from being enrolled or recorded, on the requisition of a Jurat, or intimation that he has found reason to alter his judgment.

Acts of the States.—The States must send their acts to the Lieut.-Governor, but their *representations* in opposition to his conduct, they may send direct to the Council office, and let his Excellency become acquainted with them by means of copies through that source.

Acts of the States, suspension of.—Acts of the States may be suspended by the Bailiff, [see *Dissent*] or by the Governor, [see *Veto*] or by an Order in Council.

Acts of Parliament, when they extend to the Colonies and other Possessions abroad.—Acts passed since the acquisition of a country, or at least subsequent to the establishment of its legal constitution by royal commission, or Act of Parliament do not extend to it, unless they appear to have been passed with the *intention* of being so extended. [1 Chal. Opin. 197, 220 ; 2 *id.* 202 ; 4 Mod. 225 ; Com. Dig. Navigation G. 3 ; 2 P. Wms. 75 ; 1 Black. Com. 108 ; 2 Ld. Raym. 1245, 1246 ; 2 Salk. 411 ; Stokes's Law of Col. 5 *et seq.*] This intention however, may appear either by mentioning the country by name or by general designation, such as the "Colonies," or "the West Indies," or "the dominions of his Majesty," or "the British Possessions abroad," or by reasonable construction, as in the case of navigation acts, acts of revenue and trade, and acts which relate to shipping, all which in general are obligatory on the Colonies and other Possessions, though not in terms extending to them. And acts of Parliament which alter other acts in force in the Colonies, or other possessions, are also considered by inference as applying themselves there. [Dioarris, 1st Rep. p. 5.] With regard to this latter point, we find by a late decision of the Judicial Committee of the Privy Council :—"Where a statute for regulating the trade of the Isle of Man, prohibited all

goods prohibited in the United Kingdom, the prohibition was held to vary from time to time with the prohibitions in the United Kingdom, and the repeal of a prohibition of any particular goods as to the United Kingdom, is a repeal of the prohibition as to the Isle of Man, although *not* named in the repealing Act.—[Knapp's Reports.]

Acts of Parliament, how extended, when the Islands are not included in them.—There are two ways in which an act can be *extended* : one is by a supplementary act, or by a clause grafting it upon a subsequent act, as was the case by 5 and 6 W. IV. c. 23 s. 10, which extended the 10 Geo. IV. c. 56 as amended by 4 and 5 W. 4 c. 40 ; and the other way is by an Order in Council. The former is the only effectual mode, because an Act of Parliament has force independent of all contingencies, whereas an Order in Council has not, for its force can be restrained by the Jersey authorities, and be rendered absolutely powerless. There can be no question raised as regards the *competency* of the Crown to enact laws for the Channel Islands, because the power of the sovereign over the ancient duchy of Normandy was absolute, being that of a thorough despot, whose *will* was the law ; that power however in course of time has been graciously yielded bit by bit, and paired down by Parliamentary interference to a decent standard, so as to become sufferable by the people. Hence, the Queen has a legislative jurisdiction both in Jersey and Guernsey, and indeed in all the British possessions abroad ; but then it is only in such cases, as where Parliament *leaves a void*, by non-legislation. That is the reason why Orders in Council so often have this singular provision : ‘ as far as the same are consistent with the constitution and provisions of any Act of Parliament which relates to them.’ The Queen as our legislator may then *originate* laws ; and by the advice of her Council may adopt any act of Parliament passed exclusively for England or the United Kingdom, and by an *Order* or mandate, *extend the same to the Island*, and such an Order in Council would, but for an onward event, have force of law. But it so happens, that one of her Majesty’s predecessors of glorious memory, lest peradventure he should legislate too fast for the Islanders, issued an Order, by which he put a bridle on his propensities and conceded to the Royal Court of Jersey, the power of *restraining* the force and operation of such laws, emanating either from himself or his successors.” See *Orders, Warrants and Letters*.

Acts of Parliament, how exemplified.—In 1679, it was ordered that acts of Parliament in which the island was

named should be exemplified under the Great seal, and be registered and published ; but at a subsequent period, the date of which we have not learnt, that formality was dispensed with, and the mode of exemplifying them was *altered*, and made to be by an Order in Council. This mandate usually requires the act to be *registered and published*, ‘ *not as being essential to the said act*, but that his (or her) Majesty’s subjects in the island may have notice of the said act having been passed, and that they are bound *thereby*.’ We find that previous to 1731, it was customary for acts of Parliament relating to the islands of Jersey and Guernsey to be accompanied by an Order in Council, and previous to 1806 it was ‘ an understood thing,’ though not by any means a regulation, that not only the *transmission* but the *registry* of them should take place. At present, the *transmission* by a *Clerk* of Council suffices. Thus in an Order of Council, dated July 1st, 1731, and which accompanied an act of Parliament relating to the collection of Duties for the support of Greenwich Hospital was the following regulation :—

“ And it is hereby further ordered by his Majesty that, *for the future*, whenever any act shall be passed in the parliament of Great Britain relating to the said islands of Guernsey and Jersey, printed copies of such acts shall be transmitted by the clerk of his Majesty from council, as soon as conveniently may be, to the royal courts of the said islands, signifying to them, at the same time, his Majesty’s pleasure to register and publish the said acts, and to cause the same to be carried into due execution. (Signed) James Vernon.”

Acts of Parliament, their registration not essential.—By an Order of Council of the 7th May 1806, it was decided that ‘ the registration of a *transmitted* Act of Parliament, was not essential to its operation.’ The Order was founded on the following minute :—

“ 1806.—Extract from a minute of the lords of the committee of council for the affairs of Guernsey and Jersey, dated 28th of April, 1806, referring to the registration of acts of parliament.

“ The committee think it proper to state to your Majesty, that the question, whether the registration of an act of parliament, wherein the islands of Guernsey and Jersey are expressly named, be necessary to make such an act obligatory in the said islands, appears to have arisen in 1698, upon a representation made at that time from the island of Jersey to his Majesty in Council, praying a suspension of the act of navigation, passed in the twelfth year of the reign of Charles

the Second ; and the question having been referred to Sir John Trevor, at that time his Majesty's attorney-general, he reported his opinion in the following terms.

"That the registering any act of parliament made in England, wherein the island of *Jersey* is expressly named, is *not* necessary in point of law to make it obligatory there, and such registry is only for the convenience of the island, that they may have notice of what acts are made in England to bind them.

"And the lords of the committee for the affairs of Jersey and Guernsey at that time having concurred in the same opinion of his Majesty's attorney-general it was ordered by the lords justices that the same should be transmitted to the bailiff and jurats, that they might govern themselves accordingly. Upon the whole, their lordships are of opinion, that as the act in question (the smuggling act) is binding by its own force, and there exists no power of suspending its execution either in the whole or in part, the delay in registering it can have no other effect than to deprive the inhabitants of Guernsey of that usual ratification of its provisions which was meant to be given them by the registration directed by your Majesty's Order in Council of the 15th August last ; and that, if any inconvenience should arise from the want of such registration, the same will be imputable to the non-compliance of the royal court with your Majesty's order.

"Their lordships, however, are persuaded that none of the members of that court have any wish to produce such inconvenience, but that they have acted under an erroneous supposition that it was competent to your Majesty to suspend the execution of some part of the said act, whilst it remained unregistered. Although, therefore, the registration of the said act be not necessary to give it a binding effect within the island of Guernsey, yet it may be desirable that such registration should be made in the usual manner ; their lordships, therefore, submit that it may be advisable for your Majesty peremptorily to direct the royal court forthwith to proceed to carry into execution your Majesty's said order in council."

The following extract from Mr. Hobhouse's letter (Under Secretary of State) to Sir John Colborne, Lieut. Governor of Guernsey, dated, Whitehall, 24th November 1821, will afford some further elucidation of the subject :—

"By a minute of the lords of the committee, dated 28th April, 1806, it appears to have been the opinion of the law officers of the crown, and to have been ruled by the exchequer,

that his Majesty's subjects in the islands of Jersey, Guernsey, and Alderney, are bound to take notice of every act of the British parliament,* although no registration thereof shall have taken place. The act,§ therefore, transmitted to you in my letter of the 19th September, with the order in council, directing it to be registered, must be considered as binding, as if it had actually been registered, and there exists no power in this country to suspend the operation of the act. Under these circumstances, Lord Sidmouth desires that you will communicate the enclosed extract of the above mentioned minute to the bailiff and jurats of the royal court, and recommend them to register the act immediately, without waiting for a peremptory order in council, which, according to what was done in 1806, his Majesty would probably be advised to issue."

From the foregoing, it is clear to demonstration that the registering and publishing of an Act of Parliament are not necessary to give it force: hence the only question that now remains to be considered is, whether the *transmission* be requisite. We are inclined to think that it is not, however expedient such formality might be; for it is impossible, in the in the nature of things, that an Act of the Imperial Legislature can be held to be dependent on any contingency whatever. The Lords of the Council having declared, that an Act of Parliament in which the Islands are named is "BINDING OF ITS OWN FORCE, AND THERE EXISTS NO POWER OF SUSPENDING ITS EXECUTION EITHER IN THE WHOLE OR IN PART," it necessarily follows that it must be so, independent of the transmission, and from the moment it receives the Royal Assent, unless it be mentioned differently in the Act.

Acts of Parliament, how published.—A copy of the Act and the Order in Council which accompanies it, is subscribed by the Greffier, and given to one of the Denunciators, who reads it aloud on the step under the statue in the Royal Square on a Market day. A similar formality is said to be observed in the Isle of Man, and that Acts of Parliament and all other Laws affecting the people there, are proclaimed on the Twyndhall Hill, a consecrated spot in the centre of the Island. However desirable it might be for the inhabitants of a country to be made acquainted with the laws by which they are governed, it is a well established point, that neither the registering nor proclaiming of an Act of Parliament, is ne-

* In which the Islands are named.

§ Relative to the Corn Laws.

cessary to give it force of law, unless the Act itself, (as was the case in the Canada Indemnity Act) requires them to be observed:—In the *Crown v. Picot*, 1838, a prosecution to recover a penalty of £200 under the 3 and 4, W. 4 c. 59, clause 92, which had been registered, defendant objected that there was no proof that the Act had been published, as the officer of the Court had not returned any record of the same, and consequently the Act had not force of Law: the Court considering that there was no precedent where an officer being ordered to publish a document had made a record of the same after he had done it, held that inasmuch as the officer had been ordered to publish the Act, it had been done. Objection overruled.

Acts of Parliament when their operation commences.—By the 33, Geo. 3, c. 13, the clerk of the Parliament is to indorse (in English) on every Act of Parliament passed after 8th April, 1793, immediately after the title of such act, the day, month, and year when the same shall have been passed, and shall have received the royal assent, and such indorsement shall be taken to be a part of such act, and to be *the date of its commencement, when no other commencement shall be therein provided*. An act of Parliament which was to take effect “from and after the passing of the act” operated by legal relation from the first day of the session. *Latles v. Holmes*, 4. T. R. 660. The usage of a particular place cannot controul the operation of a general statute. *Rex v. Hogg*, 1 T. R. 721; *Cald* 266. Where two acts of parliament come into operation the same day and are repugnant, the one which last received the royal assent, virtually repeals the other. *Rex v. Middlesex*, (Justices) 1 Dowl. P. C. 117, 2 B. and Adol. 818.

Acts of Parliament, repeal of.—In the case of the *King v. Knowles*, before the *Guernsey* Court in 1834, which was a prosecution to recover the penalty of £100, for having been found in the roads on board a boat called the *Gipsy*, with 20 lbs. of tobacco, and three bladders of spirits, defendant was sued on two Acts of Parliament, the 84th sect. of 6 Geo. IV. c. 114, and the 90th sec. of 3 and 4 Will. IV. c. 59, both being acts to regulate the trade of the British possessions abroad. The first which was transmitted and registered in 1825 had been repealed and substituted by the second, on the 28th Aug. 1834, which was to come into force on the 1st Sep., but the second itself which re-established the law, which the defendant was charged with having violated, was not transmitted from the Council Office to *Guernsey*, before the 16th Oct., and had not been registered. Now the offence was

committed on the 4th, or in the interval between the *repeal* of the first Act and the *transmission* of the second. The question arising out of it was—Under which of the two acts was the offence committed? or was it committed under either? An objection having been taken by defendant that the action was informal, the Crown Officer maintained that inasmuch as the acts were the same as regarded the offence, the prohibition and the penalty, defendant was bound to plead. Had the offence been committed on shore, he would have sued on the first act alone, because he considered that if on the one hand, an act was generally considered not to be in force until registered, so on the other hand having been registered, it was to be considered as binding until the repealing act was registered likewise; but the offence having been committed on the sea, and it being certain, that in England an offence of that kind would be prosecuted on the last act, in the uncertainty respecting the view which the Court might take of the subject, both acts had been recited in the action. The Bailiff on summing up the case, said he doubted if the first act could be considered in force at the time the offence was committed: supposing the offence was one entailing capital punishment, would any judge venture to condemn a man to death upon an Act of Parliament which was repealed before the offence took place, or upon one which though enacted previous to the offence, was unknown in the place where the offence was committed. The Jurats although unanimously of opinion that the second Act of Parliament had no force because it was *not* registered, yet, as they had doubts whether the first Act could be considered in force, it having been repealed by the second, discharged defendant from the action. We are not aware that there exists any positive enactment which regulates the period when Acts of Parliament acquire force of law or are regarded as repealed in the *Colonies*; but in the absence of such enactment, it has been presumed that we are warranted to conclude that such period must be reckoned, not from the date of the passing or repeal of the Act at home, but from that on which official notice of either reaches the colonies. A contemporary observes:—“What otherwise would become of the operation with regard to the Army of the Mutiny and Desertion Act, which is an annual statute. In France, laws begin to operate at the outports, so many days—the number varying according to the distance from the capital, after they have been passed at Paris. But the old law remains during the interval in full operation. This in fact is but the necessary consequence of the principle recognized by all constitutional governments, namely, that the

execution of laws, dates not from the moment of *enactment* but from that of *promulgation*."

Adjunction.—In mixed cases, such as those for assault and battery which partake both of a civil and criminal nature, the Court grants the adjunction of the Attorney-General, who conducts the suit for the Crown, and if the evidence warrants him, concludes for the infliction of a fine independent of damages for Plaintiff. The fine, however small carries all costs, which generally amount to £40 or £50. If the plaintiff be poor, it becomes the interest of the public prosecutor to draw his conclusions against the defendant in order to recover the costs; for his share, must necessarily be considerable as he signs all the summonses and charges 11s. for each signature.

Administrator.—A person chosen by six Electors, the nearest relations of a person absent from the island, to administer to his property. He takes the following oath :—" You promise and swear by the faith and oath that you owe to God, that well and faithfully you will execute the office of Administrator of the estate and effects of absent from the island, that you will preserve them as your own and better if possible; that at the end of your term you will render a true account to whom it shall appertain, and that you will regulate and govern yourself during your administration by the good counsel and advice of your Electors."

Administration, letters of.—See *Probate*.

Admiralty causes.—The Royal Courts of Jersey and Guernsey exercise jurisdiction over maritime cases or those occurring on the high seas. Their authority is *said* to be derived from the Crown, and an appeal from their decisions does not lie to the High Court of Admiralty in England, but to the Privy Council. They hold themselves competent to take cognizance of facts without regard to the country where they originated, provided either the vessel, or the parties at issue, be within their Bailiwick, and that their jurisdictions are perfectly independent of the Court of Admiralty in England. The latter point has been insisted on by the local Courts in several instances: as far back as 1608, we find that the Guernsey Court refused to allow the execution of a warrant from the Admiralty and the surrender of a vessel into the hands of an officer of that Court. It would appear, however, by the following, that an Admiralty process may be served under the cover of an Order in Council :—" Whereas it appears unto us by a petition of Robert Cumming and James Rer, merchants of the city of Glasgow, in the Kingdom of Scotland, that two ships belonging unto them, on their return from Bordeaux,

were taken by Morgan Jones, having a Sweedish commission, and that the masters were constrained to rebuy their ships and cargoes, selling in the Island of Guernsey goods to the amount of one thousand pounds for that purpose. Afterwards, the said masters, finding the said Jones in Guernsey, arrested his frigate, and a lawful prize which he had also taken, for reparation of their losses. And the petitioners applying here for justice, the then Commissioners of the Admiralty and Navy would not determine thereon until the frigate and prize were arrested by them, for doing whereof the said Commissioners issued an order, which the petitioners allege you would not obey, *pleading your privilege of immediate dependence on his Majesty and his Council*—All which having been taken into consideration, we cannot blame you for insisting upon *your right*, and preserving your ancient privileges and laws, which we do not intend to infringe, yet this being an *extra Order* in this case, and concluded to be most proper for the cognizance and determination of the Court of Admiralty, to whom we have referred the same, we do, therefore advertise you thereof, and do hereby require you to obey and execute all such orders, warrants, decrees, and judgments, as the judge of the High Court of Admiralty shall, from time to time, make, give, and set forth in this particular case, touching the arrest of the said frigate and prize, so that the sentence of that Court may be of force and effect to both parties, and such speedy determination may be given thereon, as shall be found agreeable to equity and justice, And so we bid you heartily farewell, from the Court of Whitehall, this 16th day of July, 1660. Your loving friends, Ormond, Edward Hyde, Manchester, Southampton, Albemarle, G. Carteret, Arthur Annesley, Wm. Morice, Anthony Ashley Cooper. Addressed to the Bailiff and Jurats of Guernsey."

Adultery is a misdemeanor at common law, and may be punished by imprisonment; the usual course is to give information of the *fauz pas* to the Constable of the parish in which the party is domiciled, when he makes a report of the facts to the Royal Court, and presents the offender before the tribunal, to answer the charge.

Advocates, are persons appointed to conduct suits in the Royal Court, and fill the double characters of Advocates and Solicitors; they are subject to its summary jurisdiction, and are to be limited to six, besides the Attorney and Solicitor Generals. They are admitted by the Bailiff as licentiates without being required to show that they have been called to the bar in England, Scotland or Ireland, or taken a degree in

any foreign university. They are not required to produce even a certificate from a professional man either as to their ability or character. They are sworn on their admission, and thrice every year at the Cour d'Héritage. The following is the oath taken by Advocates on their entering office: 'You swear and promise by the faith and oath that you owe to God, that well and faithfully you shall execute the office and charge of Advocate in the Royal Court of our Sovereign Lady Queen Victoria the 1st, by the Grace of God Queen of Great Britain, &c, in this her Isle of Jersey, the Majesty of whom you acknowledge under God, supreme Governor in all Her Kingdoms, Provinces and Dominions, quitting and renouncing all other foreign powers; you shall preserve the right of Her Majesty and of her subjects and support the honour and glory of God and of her Church. You shall defend and maintain the privileges, franchises, customs and liberties of the Island, opposing yourself to whosoever should wish to infringe them. You shall not undertake nor maintain, be it for Plaintiff or Defendant, any cause which shall appear to you to be unfounded in right, or entered or sustained by wickedness, you shall not mention any facts that your clients have not affirmed for truths, you shall neither propose nor allege any fact, custom or usage that you know to be contrary to right and Justice; and if any thing touches the right of Her Majesty, you shall inform the Court and maintain it. You shall not make any bargain or contract with your clients of any cause in litigation or dispute, nor any part thereof. You shall be contented with reasonable fees and salaries and assist widows, the poor, orphans, and persons unprotected. Lastly in your conclusions, you shall conform yourself to the good advice of the Bailli, the Lieutenant Bailli, and Jurats, assisting at the Court, according to the duty of your office.'

Affidavits are usually sworn before the Bailiff, or one of the Jurats; a fee of 1s. is sometimes demanded: but if they refuse to administer the oath, the party may be sworn before the Lieut.-Governor.

Affirmation.—The 3 and 4, Wm. 4, c. 49, recites: "Whereas it is expedient and reasonable that the solemn affirmation of persons of the persuasion of the people called Quakers, and of Moravians, should be allowed in *all cases where an oath is required*:" it therefore enacts that "every person of the persuasion of the people called Quakers, and every Moravian, be permitted to make his or her solemn affirmation or declaration instead of taking on oath, *in all places* and for all purposes whatsoever where an oath is, or shall be required either by the

common law, or by an Act of Parliament already made or hereafter to be made, which said affirmation or declaration shall be of the same force and effect, as if he or she had taken an oath in the usual form." A false affirmation to be punished as perjury. This act does not mention the Colonies or possessions abroad, but from the very comprehensive terms employed in it, the rule as to statutes of universal application must be deemed to operate upon it, and to give it effect in all the British dominions. The 3 and 4, Wm. 4, c. 82, is a similar act relative to "Separatists." These Acts of Parliament have not been registered, and therefore have not force of law in the island, according to the *usual dictum of Jersey Court*. In the matter of *W. Shave v. the Guardian of M. C. Roussel*, (1837) two witnesses, George Payn and Philip Lemprière, alleging they were Quakers, objected to take the customary oath, and claimed to be heard on their solemn affirmation, conformably to the 3 and 4 William 4, cap. 49, but the demand having been overruled by the inferior tribunal, an appeal was made to the Full Bench; when the Jurats, by a majority of one decided, that the affirmation of the witnesses should be received, *provided* they first proved that they were Quakers. The Plaintiff afterwards conceding that point, and consenting to receive their affirmation, the Jurats withdrew the condition, alleging the consent of the Plaintiff as their motives for so doing, and amended their judgment as follows:—"On the difficulty which has arisen touching the objection of George Payn and Philip Lemprière witnesses called by the said Guardian to take the oath prescribed by the Code of Laws of 1771, alleging that they were of the Society of Quakers, as appears by the Act of the Court, bearing date the 16th day of January 1837. The said George Payn and Philip Lemprière in the cause. The parties having recognized that the said Payne and Lemprière are of the society called Quakers, and declared their consent that they be heard on their affirmation, to speak the truth without the oath being administered to them, the Court has ordered, that they shall be received accordingly: therefore the cause is sent back to the inferior number."

Agreements to be rendered valid should be witnessed by two disinterested persons who are of age: no stamp is required.

Ale-houses.—There are upwards of 400 in St. Helier, producing a revenue of £2000 per annum, exclusive of the Grefier's fees amounting to £120. They are licensed by the Lieutenant-Governor, Bailiff, and Jurats, once a year, upon the recommendation of the Parochial assembly, the charge for which is

£5 per annum, payable in advance with a fee of 5s. to the Greffier. Licence for selling Beer and Cider only, is 25s. per annum. Merchants, and others, selling not less than by the bottle require no licence. The *Code* of 1771 provides, the Governor, Bailiff, and Jurats shall reform the abuses of Taverns and Ale-houses, and in ordering the number and reducing it when it shall be judged necessary : not allowing them without licence, and punishing drunkards and those who contravene the ordinances.

Aliens.—On arrival in the Island are obliged to present themselves to the Constable of the parish who is bound to report their names to the Governor ; they are allowed to reside in the Island only during his pleasure, and cannot intermarry with British subjects without his permission in writing.

Aliens, their disabilities.—With respect to Aliens, the Statute of 32 H. 8 c. 16 s. 13 make all leases of any dwelling house or shop *within this realm or any of the King's dominions*, made to any stranger, artificer or handicraftsman born out of the King's obedience *not being a denizen*, void and of none effect. [*Jevens v. Harridge*, 1 Saund. 1 et in notis.] This statute may be pleaded in bar to an action of debt for rent, brought against an executor or administrator, but in pleading it. it seems necessary to aver that the messuage demised was a dwelling house or shop. A place need not be alleged where he was an alien and an artificer. [*Ibid.*] The above mentioned statute is still in force, but though it makes *leases* of dwelling houses or shops granted to any stranger artificer void, yet if such artificer occupy a dwelling house or shop under an *agreement* which does not amount to a lease, as if he be tenant from year to year, or for a shorter time, an action for use and occupation will lie against him notwithstanding the statute. [*Ibid.*] An alien may however take by purchase ; but then it is for the benefit of the crown ; but unless the crown interpose, he may maintain an action for lands purchased by him. [*Burk v. Brown*, 2 Alk. 397 ; *Fowler v. Down*, 1 Bos. and Pul. 44.48.] There is no instance where a woman alien is in possession of an estate, but that it must be for the benefit of the crown ; and the husband by marrying her cannot be said to be seised of such estate. [*Ibid.*] But though an alien cannot, take a lease of a dwelling house or shop, by reason of the statute 32 H. 8 c. 16, yet he may occupy a tenement of £10 a year, and carry on his trade there like any other person : and as he may do so, he has that interest which enables him to gain a settlement in England by the provision of the legislature. [*Rex v. Eastbourne*, 4 East. 103-107.] All children born out of the

King's dominions, whose fathers (or grandfathers by the father's side) were natural born subjects, though their mothers were aliens, are now by various statutes, deemed to be natural born subjects themselves to all intents and purposes, unless their said ancestors were attainted; or banished beyond sea for high treason; or were at the birth of such children in the service of a prince at enmity with Great Britain. But grand children of such ancestors shall not be privileged in respect of the alien's duty, except they be protestants, and actually reside within the realm; nor shall they be enabled to claim any estate or interest, unless the claim be made within five years after the same shall accrue. The issue of an english woman by an alien, born abroad is an alien. The children of Aliens born in England or in any of the British dominions, are generally speaking natural born subjects and entitled to all the privileges of such. [1 Bl. Com. 373.] But a frenchwoman becomes in no way a British subject by marrying an Englishman: she continues an alien and is not entitled to dower. [1. Co. Litt. 216.] An alien cannot hold any British ships, or navigate the same, unless he shall have served on board of any of her Majesty's ships of war in time of war for the space of three years. 3 and 4, W. 4. c. 54.—See *Denizens*, and *Naturalisation*.

Aliens, their disabilities in France.—The Master of the Rolls in delivering the judgment of the Privy Council in Long v. Commissioners for claims on France, said:—"The law of France with respect to individual strangers is nearly the same as the law of England, for aliens may purchase real property here, but they cannot transfer it, because it belongs to the King. There is, however, this difference between the laws of England and France, that by the laws of France it seems to have been permitted that the *aubains*, or strangers, to hold the property till their death, and their succession alone belonged to the King. It is not so here, for if it is found by an inquisition, that any real property belongs to an alien, it may immediately be seized into the King's hands without waiting for the alien's death." [Knapp's Reports.] Pothier, in his *Traité des Personnes*, [Partie 1er. tit. 2, sec. 1ere.] says, that all persons born in countries under the French dominion are reputed frenchmen, whether their parents were frenchmen or foreigners, and that the mere birth within the Kingdom of France, gives them the right of natural born subjects, independently of the origin or dwelling place of their father and mother. This doctrine has been confirmed by a late case since the Revolution, which is reported at

length in *Martin's Repertoire de Jurisprudence*. [Art. "Domicile," sec. 13.] By the 2nd section of the 2nd title of the French constitution of the 3rd Sep. 1791, it is declared that "there are French citizens who are born in France of a french father; who having been born in France of a foreign father, have fixed their residence in the Kingdom; who having been born in a foreign country of a french father, have returned to settle in France, and *have taken the civic oath*; in fine, having been born in a foreign country, being descended in whatever degree from a frenchman or frenchwoman, who had left their country for religious motives, come to reside in France, and *take the civic oath*." By the 3rd section it is declared that "those who having been born out of the Kingdom of foreign parents, but reside in France, become French citizens, after five years' continual residence in the Kingdom; if besides, they have acquired immoveable property or married a frenchwoman, or formed an establishment of agriculture or commerce, and if *they have taken the civic oath*."

Amende honorable is made in Jersey by a declaration in open Court, that the party is a honest person, but in *Guernsey* the ceremony is performed differently, as may be seen by the case of Sarah Elliot, who was convicted before the Royal Court of that Island, in 1830, of having concealed her pregnancy, and sentenced to make *l'amende honorable* and to be transported to England for six years! On arriving at the Court house, she was taken into an apartment below, where, assisted by the woman who attended her as nurse, she exchanged her garments for a long white chemise, closely buttoned up to the neck, and down to the wrists. This done, an immense wax candle lighted, was put into her right hand, and she was led up the winding staircase, leading into the large room in which the Court was assembled. On arriving at the threshold of the room, she took off her shoes and made her entrance bare-headed and bare-footed. Having taken her place in the front of the bar, the Greffier read the sentence of the Court, and which the Bailiff communicated to her, after which she went down on her knees and said "I beg pardon of God, of my King, and of Justice, for the crime I have committed, for which I am sorry." She then rose and went to the room below, where she again dressed, and was retaken to jail.

Anchorage.—See *Harbour dues*.

Apothecaries, Chemists and Druggists require no licence, as the regulations of the Society of Apothecaries have no force here, and the Act of the States on the subject, passed in 1832, has expired through lapse of time.

Appeals to the Full Court.—From any decisions of the inferior number of the Royal Court in *civil* matters, where the sum in dispute exceeds the value of five pounds, there lies an appeal to the full bench, but the appellant must enter into sureties to satisfy the judgment if he does not prosecute his appeal within six months, because it then becomes a final one; and from all decisions of the latter tribunal, when the matter in dispute is of sufficient amount, if demanded at the time, [Thornton v. Le Breton] there lies an appeal to the Queen in Council, which if refused the party may obtain by *dolence* or petition. Appeals are either direct, or *en fin de cause*; the former are against a judgment on the whole case, and the latter on particular parts, like reserved points for consideration at the end of the suit. Appeals from the decision of the inferior number to the full Court must be prosecuted (or pursued, as we have it) not by the plaintiff in the cause, unless he thinks proper, but by the defendant, who is compelled to renew the cause once within every six months, if he does not bring it to a hearing, or else the judgment of the inferior number becomes final; the appellant bears the whole of the costs of an appeal. If a notice of renewal is given, or what is called *cause differé faute de nombre*, on the 15th April, at the opening of the Spring Term, the registry whereof takes place on the Saturday following, and if the said renewal at the commencement of the Autumn Term, should happen to be within a day or two of the expiration of the six months, and if at that juncture the Lieutenant-Governor, the Bailiff, a Jurat, Crown Officer, or Advocate, should die, the Court is closed until after his funeral, by which the appeal dies also, and Justice is at an end! It is not customary to grant an appeal to the full Court from a judgment on pain of prison, *Journeaux v. De Ste. Croix*; nor from a judgment of censure on an Advocate, *re Godfray*; nor against a prohibition to the Ecclesiastical Court, *Hue v. Durell*; and it would appear, that an appeal does not lie against the judgment of the Petty Court in a prosecution of the Crown for penalties, *Crown v. Le Brun*, but in *Crown v. Hue and Amy*, an appeal was granted to defendants. Appeals to Council are only granted by the Court *en fin de cause* (*Crown v. Nicolle*) but may be obtained by *dolence* on any preliminary point, which, if granted, an order is issued to stay further proceedings in the Court below until the petitioner shall have been heard in support of the allegations set forth in his petition, *re Whitfield*. If the inferior Court refuses to allow the intervention of a party, an appeal does not lie to the full Court: a revision of the judgment

of the inferior number can only be obtained by petition. From the verdict of a Petty Jury, their lies an appeal to the Grand Jury, but the verdict of the latter is final, there being no appeal to the Crown in criminal cases.

Appeals to the Privy Council, regulation of.—An appeal lies from the Royal Court of Jersey to Her Majesty in Council, in cases only where the matter in dispute, in real actions is of the value of five liv. stg a year, [Code of Laws, p. 168]. or in personal actions of £80 Sterling. [Act of States of 30 Jan. 1833, confirmed by Order of Council of 15 July 1835.] But it would appear from the case of Tupper from Guernsey, [2 Knapp's Privy Council reports p. 201], that leave to appeal from the decision of the Royal Court of that Island confirming a rate for the relief of the poor was granted to rate payers, the assessments on whom, separately, were *less* than the sum fixed by the Order of Council regulating appeals from that Island, for that order limited the right of appeal to cases where the object in dispute, if real property, amounts to £10 a year, and if personal to £200. [Order in Council of 13th May 1823.] Although the right to *present* appeals was limited and regulated, yet by the ancient law of this Island [Order in Council, July, 1745] the right of the Crown to *admit* appeals was reserved. Since the Council Board has been remodelled their Lordships have established as a general principle that all appeals shall be granted, not by the tribunal whose decisions are complained of, but by that to which the appeals are made. Hence, it is in her Majesty's power upon Petition to allow an appeal in cases of any value, [2 Chal. Opin. 177] and this right is expressly reserved to the crown by the Privy Council Act 3 and 4 Wm. 4 c. 4. When there is a probability that it may be proper to ask an appeal, care should be taken to have the depositions of witnesses, if any, taken in writing, as without this precaution the judgment of the Full Court might be definitive. By the practice of the Jersey Court, an appeal must be moved for at the time the judgment of that tribunal is pronounced, otherwise it will be too late. [Le Geyt's, M. S. S., Gen. Thornton v. Le Breton, Esq., Le Feuvre v. Le Feuvre.] An appeal to Council having been granted, the appellant must give security within eight days for the due prosecution of it within the time allowed by law, i. e. three months, unless sufficient cause be shewn to their Lordships, for the delay, or else the appellant forfeits five pounds to the Bailiff. [Code of Laws, p.p. 169, 170.] Having lodged a petition of appeal and an authenticated copy of the decision appealed from, the appellant is entitled to a sum-

mons to compel the Respondent to appear and answer within 40 days. [Order in Council of 15th July 1835.] This summons is served by the Viscount or his Deputy. If the appellant should neglect to prosecute the appeal or the Respondent to appear then the general practice of the Council board either in regard to an application for leave to dismiss or to obtain an *ex parte* hearing must be followed. Should the Royal Court refuse to grant an appeal to Council, [Le Gros v. Le Breton, 2 Knapp p. 181, Case of Oyster Fishermen, Tupper's case before cited] or to reopen the business on a remonstrance, where a judgment has been obtained by default, [Whitfield's case] or from some other informality, the aggrieved party may present a petition of complaint, technically termed a doleance to the Council board, a copy of which complaint is transmitted to the Court below, with an order requiring an answer thereto, stating the reasons of their refusal. That answer is usually drawn up by the counsel for respondent, and signed by the Bailiff. The practice does not extend to petitions for leave to appeal from the Courts of any other of her Majesty's dominions. If after hearing the parties the Council Board consider that the case ought to be entertained by them, they will either grant leave to appeal as in Tupper's case, or make such other order as the justice of the case may seem to require as in re-Whitfield and Le Gros v. Le Breton. There does not appear to be any fixed time within which a doleance or petition for leave to appeal where an appeal has been refused by the Court below, ought to be presented. [Orphan Board v. Van Reenen 1 Knapp, p. 93.] And it would seem that the Privy Council possess an equitable jurisdiction or general power of superintendence and control over the proceedings of the Court below, which their Lordships will exercise when a fit case shall be made out to warrant their interference. [Re Whitfield, Re Tupper, Oyster Fishermen.] In cases where the Crown is concerned their Lordships do not allow costs. The *Code* says 'there shall be no appeal allowed in any matter contested before the Royal Court, before that it has been fully heard, and definitive sentence has been given on the subject,' hence if all the Jurats should be recused, the case would be put beyond the reach of the law, unless the Privy Council, were to take cognizance of it in the *first* instance. If an appellant abandons his appeal before Council, the adverse party should action him before the Court below to see the Judgment there carried into execution. [Godfray v. the Principaux.]

Appeals to the Privy Council, in forma pauperis.—Appeals may be prosecuted in *forma pauperis*, by applying to the Court, as in *Moisson v. Quelin*, (1826,) and *Brouard v. Dumaresq* and others, (1838), and if refused, unless the appellant enters into sureties, by petitioning their Lordships for leave to appeal, and making an affidavit that he is not worth £5 in the world, excepting his wearing apparel and his interest in the matter at issue, and that he is unable to provide sureties: the said petition must briefly set forth the facts of the case, and pray for leave to appeal in *forma pauperis*, so that sureties may be dispensed with. The petitioner's Counsel in the Court below, or in the Court above, it matters not which, must certify that he has grounds for an appeal, and the Petition, affidavit and certificate must be lodged at the Council office within three months from the date of the judgment.

Appeals to the Privy Council, Copies of the proceedings in the Court below.—The Code says 'there shall be no appeal received if the copy of the sentence or judgment, and of all the proceedings, is not presented under the seal of the Island; but in order that the appellant should not meet with any obstacle in obtaining them, the Bailiff and the Jurats of the said Island before whom the appeal shall have been entered, shall be bound upon application from the party appealing, to deliver or cause to be delivered to them the said copies, within eight days after the request have been made. That which is understood by a copy of all the proceedings, comprehends not only the declarations of the plaintiff, and all the reasons which shall have been advanced by the one or other of the parties; but also the Judgments of the Court and the proofs produced, be it on the depositions of witnesses or by title and evidences which shall have been admitted as proofs, and all the decisions of the Court be it that they reject or contradict the proofs offered.

Appeals to the Privy Council, regulations for hearing of.—“And it is hereby further ordered, that from and after the date of this Order, all Appeals to his Majesty in Council from the islands of Jersey and Guernsey shall be subject to the same regulations as to setting down for hearing and being heard as shall from time to time be in force with regard to Appeals to his Majesty in Council from his Majesty's Plantations and Colonies abroad. And it is hereby further ordered, that henceforth in all appeals to his Majesty in Council from the said islands, the respondents thereto be summoned by the proper officers of the said islands respectively to appear and answer the said Appeals within forty days from the said respondents being so summoned.” [Order in Council 15th July 1835.]

Appellation.—Men of low degree are designated *Maitre*, Solicitors and those of the middle class are called *Monsieur*, the eldest sons of the Governor, Bailiff and Jurats, as also those persons holding a commission in the Militia below the rank of Captain, are called *Gentilhomme*; the Jurats, Crown Officers, Advocates, Medical Practitioners, and persons holding commissions of Captain and above, are called *Ecuyer*. Women of low degree are designated *Maitresse*; the daughters of Jurats and of persons holding commissions are called *Demoiselle*, which is prefixed to their maiden names and used in all legal documents, whether they be married or single: Women of the highest class such as the wives of Jurats and persons holding commissions are called *Madame*. A very punctilious observance of these titles is necessary in all proceedings before the Court, for it frequently happens that a party is sent back to reform his action through a neglect of the same.

Appraisers.—There are six appointed in each parish by the parochial meeting: their business is to value the lands that are to be divided among heirs.

Apprentices bound in *England*, for a term which would not expire until they were 21 years of age, would be released at 20 from their obligations in either Island, as that is the age when they attain their majority.

Approbation of Age.—When a minor under guardianship, has attained the age of 20 years, he may apply to the Court by motion for leave to call on his guardian to show that he is entitled and qualified to administer his own property. On this application the Court issues an order to summon the Guardian and Electors to appear, when the following oath is taken:—“ You promise and swear by the faith and oath that you owe to God, that well and faithfully you shall declare the truth of that which you know, that is, if son or daughter of has attained the full age of twenty years, and if he or she is of sufficient discretion to have the management of his or her goods, lands and chattels.” If the applicant's majority be proved, he is thenceforth in full exercise of his rights.

Arbitrations are frequently resorted to in the island: the arbitrators being agreed on by the disputants, a rule of Court is granted to refer the matter to their award without appeal or dolence: when the award has been given and remains unsatisfied, the party in whose favour it is rendered, summons the other before the Court, to show cause why judgment should not be entered up and enforced by execution. Arbitrations are sometimes entered into by Bond, which is by far, the more

preferable mode, as parties thereby may avoid the subterfuges, shufflings and delays which are daily practised under a rule of the Jersey Court.

Arpenteurs, or Land Surveyors are nominated by the Bailiff, on the certificate of two surveyors, as to their competency, their number is unlimited ; they are admitted at the opening of the Court of Heritage and take the following oath :—" You promise and swear by the faith and oath that you owe to God, that you will exercise the office of Surveyor, that you will make all good and faithful measure, and give in good and faithful records, as you would wish to appear before God, to the acquittal of your conscience."

Arraignment.—When a prisoner is put on his trial, he is not fettered, nor is he in general during his incarceration : customs in England, that seem inconsistent with the acknowledged axiom, that every person is presumed to be innocent until found guilty. If the supposed culprit cannot afford to employ a Counsel the Court will direct one of the advocates to plead for him.

Arrest.—See *Debt*.

Assault.—Prosecutions cannot be maintained for assaults but by the evidence of two witnesses ; the punishment is fine and imprisonment. If the complainant be joined with the Attorney General, a fine to the Crown is imposed without imprisonment, and damages are given for the injured party. A person charged with an assault is not only liable to be criminally tried for the offence by *enditement*, but can be sued for damages in a civil form, notwithstanding he may have been acquitted or convicted and punished. [Durell, v. Noel, Godfray and Duhamel.]

Assessment to the Parochial Rate.—The following clauses from the Act of the States, passed 14th Jan. 1833, and confirmed by Council, 15th July, will explain the law on this subject :—ARTICLE I. A Parochial Assembly shall be annually convened in the month of January, to draw up a List of those who are to contribute towards the wants of the Parish, and likewise to fix the proportion (in quarters) wherein they are to contribute thereto ; which List shall, as formerly, bear the name of Parochial Rate. A fortnight after the List will thus have been drawn up, the Constable or Chief of Police shall call a Parochial Meeting for the purpose of hearing those persons who might think themselves overburdened, or who might think that they ought to be inscribed on the Rate List. After the Meeting shall have decided on their claims, the Rate List shall be ratified, the

Chief of Police shall pass his accounts, and the taxation of the new rate shall then be proceeded with, for the presumed wants of the current year. Should the wants of the Parish exceed the sum whereof the levy shall have been ordered, it shall be lawful for the Assembly to levy one or more others, but always on the Rate List drawn up in the month of Jan. ART. II. No person shall be registered on the List of Contributors of a Parish: 1st. Unless he has been a resident of the said Parish for the space of a year and a day, except in the case provided for by Article third; 2ndly. Unless he possess in this Island, either in moveable or landed property, the value of two quarters of wheat annual rent, the sum of three hundred and thirty-three livres six sous eight deniers being the estimated value of one quarter of wheat rent. ART. III. All those who possess landed property in this Island, without however being Residents therein, shall be registered on the List of the Contributors of the Parish where the chief part of their property shall be situated. ART. IV. Every person possessed of the qualifications mentioned in Articles 2 and 3, shall be taxed at one quarter, and those possessed of more considerable property shall be taxed at half the value of their property, according to the proportion fixed in the preceding Article with respect to moveable property, provided always that no fraction of a quarter be allowed to exist on the rate.

Attachment.—Every description of moveable property within the Bailiwick is liable to attachment for debt, if the owner be ex-patriable, and even monies in the hands of, and debts due from a third party to the debtor. The case of Mr. W. Davies, formerly of Southampton, who afterwards kept a Musical Warehouse in Jersey, and who died suddenly in Guernsey, when on a visit to that Island, will illustrate the law on this subject. Mr. Davies died on the 3rd Dec. 1837, and the moment the news reached this Island, his Jersey creditors, twelve in number, caused an administrator to be appointed to his heirs, and attachments to be levied by the sheriff on his stock in trade, for claims amounting to £168 10s. 6d. and as no *desastre* was declared, there being no creditor present who was dissatisfied with the proceeding, the attachments were confirmed by the Royal Court on the following Saturday, and the goods sold by public auction in pursuance thereof. By this manœuvre, the Jersey Creditors obtained the whole of the estate for their exclusive benefit, and were paid in full, whilst the London creditors, those who supplied the deceased not only on credit, but also on commission, with

the very goods which were seized, and whose claims amounted to upwards of £600, obtained nothing whatever !

Attornies are nominated by the Bailiff ; their number is unlimited. No term of clerkship or other qualification is necessary, nor any expences attending their admission. No English Lawyer can practice in the Royal Court without leave.

Avocat general de la Reine or Queen's Solicitor General is appointed for life by letters patent from the Crown. His duties are similar to those of the Attorney General, and he is sworn by the like oath. His salary is £50 per annum and fees of office, about £200 more exclusive of his *honoraires* as counsel in private suits. Although usually consulted by the Attorney General, he is expressly forbidden by Order in Council to interfere in any criminal proceedings whatever excepting in his absence.

Avocat Promoteur.—The public prosecutor of the Ecclesiastical Court, is nominated by the Dean, and takes oath to discharge the duties of his office.

Auctioneers require no licence nor is any duty payable by purchasers on their lots ; but a tax to the poor of one penny, called Good's pence, is charged and disposed by the Auctioneer according to his discretion.

Autorise du Procureur General de la Reine is the Clerk of the Attorney General, to which office is annexed a salary of £25 a year, and whose duty it is to summon defendants to appear before the Court in matters wherein the crown is concerned, and to perform other acts connected with such proceedings.

Bailli or Bailiff, is the Chief Justice of the Royal Court, and President of the States. He is appointed by Letters Patent from the Crown, and is usually created a Knight ; his salary is £300, and perquisites, about £1,500 per annum. The appointment of the present Bailiff is not for life, but during pleasure. The following is the oath he takes :—" You promise and swear here in the presence of God, that you will execute faithfully the place and office of Bailiff in the island of Jersey, under our Sovereign Lady Victoria the First, by the grace of God, Queen of Great Britain, and the Dominions belonging thereto, renouncing all Foreign Powers ; you will uphold and maintain the honour and glory of God, and the preaching of his pure word : you will preserve and keep the rights of Her Majesty, and revoke according to Law and Justice, if you shall find anything has been omitted, neglected or forgotten ; You shall preserve and keep the Peace as much as in you possible ; You shall subvert and cause to be punished, Trai-

land." In the case also of *ex-parte* Smith, [Cooper 402,] Lord Hardwicke decided that a party who had *never traded to England or resided here*, but who had merely been in the habit of coming over to England to purchase goods, did come within the Bankrupt Laws; although in that case the party had come to England for the express purpose of being made a Bankrupt. There were the cases also of *Bird v. Segwick*, [Palk. p. 110] and *Alexander v. Vaughan*, [Cooper p. 398] in both of which it was held, that a person trading to England, though *not resident here*, if he committed an act of Bankruptcy here, was amenable to the Bankrupt Laws. Upon the authority of those cases, and upon the words of the statute, I have no doubt that the bankrupt was a trader; and I, therefore, think that this rule should be discharged."—Rule discharged.

Several cases in support of this position may be quoted from Cooke on the Bankrupt Laws, all of which establish the assertion of that author that "any person trading to England, whether native, denizen, or alien, *though never resident in England* as a trader, may be a bankrupt, if he occasionally go to England, and commits there an act of bankruptcy." The smallness of profit is no consideration, and one act of buying and selling is sufficient to constitute a trader within the Bankrupt Laws. *Newland v. Bell*, [Holt 221, Gibbs.] The cases more particularly relied on are the following :

1. That of *W. Grice*, a merchant of Dublin, who occasionally went to England to purchase goods which he afterwards sold in Ireland, and once sold a parcel of neat's tongues in England, and at another time a parcel of tallow in Ireland to be delivered in England, and afterwards committed in England an act of bankruptcy. The Court resolved that he was a bankrupt, declaring though he both bought and sold but *once* in England, yet his so doing was not essential to his being made a bankrupt, for many merchants only bought beyond sea and sold in England, and others only bought in England and sold beyond sea,—it was *trading* that made a man liable to the bankrupt laws,—and Grice did plainly trade in England.

2. That of *Bird v. Sedgwick*, where a gentleman from the temple went from England, to Lisbon, where he turned factor, and traded to England, and broke. He was held to be a bankrupt by reason of his having traded to England and back again.

3. That of *J. Ashley*, a planter in Barbadoes, who being in the habit of sending goods from his plantation to England, and of receiving others purchased in England, and coming over to

England and committing there an act of bankruptcy, was held by Lord Hardwicke to be subject to the English bankrupt laws.

4. The case *Ex-parte Williamson*, where Lord Hardwicke said that there were several instances in which persons having their sole place of residence in the colonies, yet happening to be in England, had had commissions of bankruptcy taken out against them; and that if a merchant residing abroad but trading to England, committed in England an act of bankruptcy, he might be made a bankrupt.

5. The case of *Alexander, v. Vaughan*. Alexander was a native of Scotland residing at Edinburgh, and partner in a large Scotch brewery which carried on trade to almost all parts of the world. Coming occasionally to England he was arrested there, and having lain in prison upwards of two months was afterwards made a bankrupt. The assignees deputed the defendant, as their messenger, to seize upon his property in Scotland. Alexander, disputing their right to make him a bankrupt brought an action of trespass against the messenger. The case was argued before Lord Mansfield who after taking an elaborate review of all preceding analogous cases, held the plaintiff to be subject to the English bankrupt laws, and ordered a nonsuit.

Bankrupt laws of England, what persons shall be deemed traders liable to become bankrupt.—Sec. 2, Stat. 6, Geo. 4, cap. 16 entitled, "An act to amend the laws relating to Bankrupts." Enacts that persons of the following descriptions shall be deemed traders liable to become bankrupt, viz. bankers, brokers, scriveners, persons receiving other men's monies or estates into their trust or custody, persons insuring ships or their freights, warehousemen, wharfingers, bakers, builders, carpenters, shipwrights, victuallers, inn, tavern, hotel, or coffee-house keepers, dyers, printers, bleachers, fullers, calenderers, cattle or sheep salesmen, and all persons using the trade of merchandise by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail; and persons who either for themselves or as agents or factors for others, seek their living by buying and selling, or by buying and letting for hire, or by the workmanship of goods and commodities. But no farmer, grazier, common labourer, or workman for hire, receiver-general of the taxes, or member of, or subscriber to, any incorporated commercial or trading companies, established by charter or act of Parliament, shall be deemed a trader liable to become bankrupt.

What shall constitute an act of Bankruptcy.—Sec. 3. “If any *such* trader shall depart this realm, or being out of this realm shall remain abroad, or depart from his dwelling house, or otherwise absent himself, or begin to keep his house, or suffer himself to be arrested for debt not due, or yield himself to prison, or suffer himself to be outlawed, or procure himself to be arrested, or his goods, money or chattels to be attached, sequestered, or taken in execution, or make or cause to be made *either within the united realm or elsewhere*, any fraudulent grant or conveyance of any of his lands, tenements, goods or chattels, or any fraudulent surrender of copyhold lands or tenements, or any fraudulent gift, delivery or transfer of any of his goods and chattels, every such trader so doing, suffering, procuring, executing, permitting, making, or causing to be made any of the acts, deeds or matters aforesaid, *with intent to delay or defeat his creditors in the recovery of their debts*, shall be deemed to have thereby committed an act of Bankruptcy.” [*Observe.* If a trader whose house of trade is in Ireland comes to England on business and again quits this country to avoid an arrest, it is a departing the realm with an intent to delay his creditors, sufficient to constitute an act of bankruptcy. [Williams v. Nunn, 1 Taunt 270. 1 Camp, 152.] If the necessary consequence of a trader’s departing the realm is that his creditors may be delayed, he thereby commits an act of bankruptcy [Ramsbottom v. Lewis, 1 Camp. 279. Ellenb.] Again, Sec. 4. “Enacts that the conveyance by any such trader of the entire of his property to trustees for the benefit of all his creditors, shall *not* be deemed an act of bankruptcy, *unless* a commission be sued out and issue against such trader within six calendar months after the execution of such conveyance. Provided, however, that the trustee or trustees execute the deed within fifteen days after the party conveying shall have made it; and that the execution both by trader and trustee or trustees, be attested by a solicitor. Provided also, that notice of the conveyance must be given within two months after its execution, by such trader—if he reside in London, or within forty miles thereof, in the London Gazette, and two London daily newspapers, or if beyond forty miles from London, then in the London Gazette, one London daily newspaper, and one provincial newspaper in the vicinity of the trader’s residence, such notice to set forth the date and execution of the conveyance with the names and places of abode of the trustees and solicitor respectively.” Again, Sec. 5. “Enacts that any such trader, who shall upon any species of arrest for debt, or on any attachment for non-payment of

money, remain in prison twenty-one days, shall be deemed to have committed an act of bankruptcy, also that any such trader, under arrest, commitment, or detention for any species of debt, who shall escape from prison or custody shall be deemed to have committed an act of bankruptcy from the time of such arrest, commitment or detention." Again, Sec. 6. Enacts If any such trader shall file, in the office of the Lord Chancellor's Secretary of Bankrupts, a declaration in writing, signed by him, and attested by an attorney or solicitor, that he is insolvent, or unable to meet his engagements, on a memorandum to that effect issuing from the said Secretary of Bankrupts, the printer of the London Gazette shall be authorized to insert an advertisement of such declaration therein; and such declaration shall, after such advertisement shall be inserted, be an act of bankruptcy committed at the time of filing the declaration; but no commission shall issue thereupon, unless sued out within two calendar months after the insertion of such advertisement, and unless the same shall have been inserted in the London Gazette within eight days after filing of the declaration; and no docket shall be struck upon such act of bankruptcy before the expiration of four days after the insertion of the advertisement, in case the commission is to be executed in London; or before the expiration of eight days, if in the country; and the Gazette shall be evidence of such declaration having been filed. Sect. 7. Enacts. No commission, under which the adjudication shall be grounded on the act of bankruptcy being the filing of the declaration spoken of in the preceding section, shall be deemed invalid, by reason of such declaration having been concerted between the bankrupt and any creditor, or other person.—[*Observe.* Neither the declaration nor the petition to the Insolvent court is filed within the meaning of the statute so as to constitute an act of bankruptcy until it reaches its final destination, the custody of the proper officer in the office. [Garlick v. Sangster, 2 M. Scott, 68. 9, Bing 46.] The form of the declaration :—["I, *Joseph Styles*, of &c., *builder*, do hereby by virtue of an act passed in the sixth year of the reign of his late Majesty, intituled "An act to amend the law relating to bankrupts" declare that I am insolvent and unable to meet my engagements with my Creditors. As witness my hand, this day of 183—*Joseph Styles*. Witness T. L. Temple, Solicitor."]

Petitioning Creditor.—Sec. 13. Enacts that petitioning creditor shall make affidavit of debt, if one £100, two £150, and three or more, £200; and give bond to the Lord Chancellor for duly proving the same, and the act of bankruptcy, which

bond is to be assigned over to the bankrupt if the commission shall have been taken out fraudulently and maliciously. [*Observe.* British subjects in any part of the world may petition for a fiat. Ex-parte Baglehole 18 Ves. jun. 525. 1 Rom. 271.]

Commission.—By sec. 12, the Lord Chancellor is empowered, upon petition made to him in writing against any trader having committed any act of bankruptcy by a creditor or creditors of such trader, to issue a Commission or fiat under the great seal, appointing such persons as to him shall seem fit, who shall by virtue of this act and of such commission have full power and authority to take such order and direction with the body of such bankrupt as is herein mentioned, as also with all his lands, tenements and hereditaments, *both within this realm and abroad* as well copy or customary hold as freehold, which he shall have in his own right before he became bankrupt, as also with all such interest in any such lands, tenements and hereditaments as such bankrupt may lawfully depart withal, and with all his money, fees, offices, annuities, goods, chattels, wares, merchandize and debts, *wheresoever they may be found or known*, and to make sale thereof in manner therein after mentioned or otherwise order the same for satisfaction and payment of the creditors of the said bankrupt. This commission is a power or authority, under the great seal, to the commissioner to whom it is directed, to proceed, not only as to the bankrupt and his property, but as to all other persons who by concealment, claim or otherwise, shall offend touching the premises, and to do and execute all things towards satisfaction and payment of the creditors.

Bankrupt laws of England, relation back of the commission and property of the assignees.—The entire property of a bankrupt, though situated in Jersey, Guernsey, or wherever it may be found, passes to the assignees under the commission, even from the date of the first act of bankruptcy; therefore it is usually said, that once a bankrupt and always a bankrupt: by which is meant, that a plain direct act of bankruptcy once committed, cannot be purged or explained away, by any subsequent conduct, as a dubious equivocal act may be; but that, if a commission is afterwards awarded, the commission and property of the assignee shall have a relation of reference, *back to the first and original act of bankruptcy*. Inso-much that all transactions of the bankrupt are *from that time absolutely null and void*, either with regard to the alienation of his property, or the receipt of his debts from such as are privy to his bankruptcy: for they are no longer his property,

or his debts, but those of the future assignees. Cooke, says, p. 569: "Where a trader commits an act of bankruptcy, by lying in prison two months [by 6 George IV. c. 16, the term is reduced to 21 days] it relates to the *first* day of his surrender, *so as to overreach all intermediate transactions.*" Jacobs, says, "The property vested in the assignees is the whole that the bankrupt had in himself at the time he committed the first act of bankruptcy, or that has been vested in him since; therefore when the commission is awarded, the commission and the property of the assignees, shall have a relation or reference back to the original act of bankruptcy." The authorities adduced, in support of this are Cooke and Lord Henley, on the Bankrupt Laws, the latter of whom stated that "it had been long considered as *established law*, that the commission vests in the assignees the bankrupt's personal estate *in every part of the world.*" This "*established law*," has become statute law, by the 6th Geo. IV. c. 16, the 63d and 64th sections of which state in express terms that the whole personal and real estate of the bankrupt vests in the assignees, wherever the same may be found or known—in England, Scotland, Ireland, or in any of the dominions, plantations, or colonies, belonging to his Majesty." Several cases from both the last mentioned authors show that Courts of Justice, both at home and abroad, preferred the title of a bankrupt's assignees over that of creditors seeking to obtain an unjust preference to the prejudice of others. An English Court of Justice would prefer the title of a Jersey or Guernsey *saisi* to that of English creditors holding some of the bankrupt's property under arrest in England. In the cases of *Solomons v. Ross*, and *Jollet v. Deponthiev*, where the laws of Holland having vested the administration of the bankrupt's property in persons who are called curators of desolate estates, the Court of Chancery held that they had a title to the property of the bankrupts in England, in preference to English creditors who had attached that property. Lord Chancellor Loughborough, advertng to these cases, said "The determinations of the Courts of this country have been uniform to admit the title of foreign assignees," and that the principle had likewise had 'a very universal observance among all nations.' A commission vests in the assignees under it all the property of the bankrupt wherever situated, precluding creditors in Scotland from attaching by sequestration the debtor's property remaining or situate in that country, and from administering it in a course of distribution, under such process of sequestration; and although the commission does not of itself operate

upon the heritable property of the bankrupt in Scotland, yet it imposes upon him a legal obligation to execute the proper conveyances, and to do the necessary acts for transferring it to his assignees. *Scotland (Bank) v. Stein*. 1 Rose 462. And see *Hunter v. Potts*. 2 T. R. 182. The assignment under an English commission vests in the assignees, and *without the necessity of intimation*, the whole of the bankrupt's personal property in Scotland, and all subsequent diligence by any Scotch or other creditor is thereby precluded. *Selkrig v. Davies*. 2 Rose 97. The commissioners may assign all the bankrupt's property abroad as well as at home. *Hunter v. Potts*. 4 T. R. 182. A creditor in England, and subject to the Bankrupt Laws, having attached the bankrupt's estate abroad, must restore it. *Benfield v. Solomons* 9 Ves. Jun. 80. The Court cannot compel a bankrupt to execute to his assignees an assignment of debts due to him in America, though the American government will not take notice of the rights of the assignees under the Bankrupt laws of this country. *Ex parte Blake*. 1 Cox 398. An injunction was granted against proceeding under a foreign attachment by a joint creditor, upon a separate commission overreaching the attachment by relation of the act of bankruptcy. *Barker v. Goodair*, 11 Ves. Jun. 78. In the celebrated case of *Sill v. Worswich*, in the bankruptcy of Skirrow, a case most ably and elaborately argued, and in which all the preceding cases were mentioned and discussed; the principle decided was, that "If after an act of bankruptcy committed, a creditor attaches property of the bankrupt in the West Indies, and receives the money, *the assignees may recover back the amount in an action for money had and received.*" The judgment in this case also was pronounced by Lord Loughborough, a man of great abilities, and a sound and eminent Lawyer—and, in one part of his judgment, his Lordship, after adverting to the fact that the Law upon the act of bankruptcy being committed vests the property in the assignees, that they may apply it to the just purpose of the equal payment of the bankrupt's debts—proceeds to make the following declaration. "If the bankrupt happens to have property which lies out of the jurisdiction of the laws of England: if the country in which it lies proceeds according to the principles of well regulated justice, there is no doubt but it will give effect to the title of the assignees. *The determination of the Courts of this country have been uniform to admit the title of foreign assignees.*" That the same principle formerly had an universal observance also in Guernsey, may be proved from the Courts' records. The cases are

that of *Le Marchant v. Gover*, in the bankruptcy of Lightfoot, May 19, 1767—that of *Le Marchant v. Dobrée*, in the bankruptcy of Le Gros, March 24, 1778—that of *De Lisle v. Havilland Le Messurier*, in the bankruptcy of the latter—that of *Barway v. Gee*, in John Edward's bankruptcy, 20th Oct. 1801, and that of *Rawden and others v. Grut and others*, in the bankruptcy of J. and W. Fox, 3d May, 1804—in all which cases the Court preferred the title of English assignees to that of creditors attaching the property belonging to the bankrupts—though in almost every case the attaching creditors were Guernseymen, and in the case of J. and W. Fox, the attachments had been made full two months before the commission of bankruptcy issued, thus showing that the Court had consecrated the doctrine of relation back to the act of bankruptcy. Property attached in Jersey, being by laws of this Island vested in the creditor attaching upon confirmation by the Court of the Island, in case of bankruptcy—it was held that the creditors attaching were entitled to hold the property attached, and to prove for the residue where the act of bankruptcy was subsequent to the completion of the judicial act, whether on the same or any other day; but where the act of bankruptcy was previous, they could not hold against the assignee. *Exparte, Dobree* 8 Ves. jun. 82. In the bankruptcy of *Le Couteur*, the Privy Council, by entertaining the petition of the Assignees for leave to appeal against the sentence of the Royal Court of Guernsey which confirmed an attachment on the bankrupt's property, subsequent to an act of bankruptcy committed in England, when the whole merits of the case were fully discussed before them, and by pronouncing an Order conformable to the prayer of that petition, have in effect virtually decided this question—and we may now take the proposition as firmly established that the Property of Bankrupts in Jersey and Guernsey passes to their Assignees under the English Bankrupt Act, from the day on which the act of bankruptcy was committed. In the case of *Mr. J. B. Arnold*, attorney for the assignees of the estate and effects of *Messrs. Metivier and Co.*, of Wottonunder Edge, in the county of Gloucester, against *Mr. James Guille*, to hear the *Guernsey* Court annul an attachment made by the said James Guille, in the hands of *Messrs. Dorey and Nastel, H. T. Brehaut and Co.*, and others of that Island, of whatever they may be indebted unto the said Metivier and Co., or have in hand belonging to them, to obtain payment of £998 15s. 0d. or thereabouts, amount of various bills of exchange drawn by the said James Guille or accepted

by him for the said Metivier and Co. The facts were as follows :—On the 28th March 1834, an announcement appeared in the *London Gazette* declaring that Messrs. Metivier and Co., were insolvent. A fiat was issued against them on the 2nd April, and they were adjudged bankrupts by Mr. Commissioner Williams on the 4th April. The official assignee was appointed on the same day, and in the evening the usual announcement appeared in the *London Gazette*. On the same day, 4th April, the attachment was made in Guernsey by Mr. James Guille, who had quitted England after Metivier and Co., had failed; and on the 5th April, a rule of Court or judicial act was obtained in consequence of the attachment, which rule of Court, by the law of Guernsey, and not the attachment, was the act under which he might claim a preference on the property attached. The assignees were appointed on the 21st April. They demanded that the attachment should be set aside, maintaining that the property attached was vested in them from the 28th March. The Bailiff said that the question in this case was, whether the assignment was to be considered as having taken place on the 21st April, or whether an attachment made after the 28th March, when the insolvency of the debtors was announced in the *London Gazette*, after the 2d April when the Fiat was issued, and after the 4th April when the adjudication of bankruptcy took place, was legal. He considered that the announcement of the 28th March ought to be regarded as a public declaration of insolvency, and that a subsequent attachment was consequently null. Judgment was accordingly given for the plaintiff, and the attachment set aside with costs.

Bankrupt Laws of England, Bankrupt's Personal Estate.—Sect. 63 Enacts. That the commissioners shall assign to the assignees, for the benefit of the creditors of the bankrupt, all the present and future *personal* estate of such bankrupt, *wheresoever the same may be found or known*, and all property which he may purchase, or which may revert, descend, be devised or bequeathed; or come to him, before he shall have obtained his certificate; and the commissioners shall also assign all debts due or to be due to the bankrupt, *wheresoever found or known*; and such assignment shall vest the property, right, and interest in such debts in such assignees, as fully as if the assurance whereby they are secured had been made to such assignees; and after such assignment, neither the bankrupt; nor any person claiming through or under him, shall have power to recover the same, nor to make any release or discharge thereof, neither shall the same be attached as the debt

of the bankrupt by any person, according to the custom of the city of *London* or *otherwise*, but such assignees shall have like remedy to recover the same, in their own names, as the bankrupt himself might have had, if he had not been adjudged a bankrupt." [Sect 25, 1 and 2 Wm. 4. c. 56, provides that the Bankrupt's *personal* estate shall vest in assignees, by virtue of their appointment without any deed of assignment from the commissioners for that purpose.] Sect. 72, Geo. 4. provides that goods in the possession, order, or disposition of the bankrupt may be sold by the commissioners. Sect. 73, that if the bankrupt shall convey his lands or goods to others or deliver securities or transfer his debts into other names, the same shall be void; and Sect. 120, that persons concealing bankrupt's effects shall be liable to a penalty of £100.

Bankrupt Laws of England, Bankrupt's Real Estate.—Sect. 64 Enacts. That the commissioners shall, by deed indented and enrolled in any of her Majesty's courts of record, convey to the said assignees, for the benefit of the creditors, all *lands, tenements, and hereditaments*, except *copy or customary-hold*, in *England, Scotland, Ireland, or in any of the dominions, plantations or colonies belonging to his Majesty*, to which any bankrupt is entitled, and all interest to which such bankrupt is entitled therein, and of which he might, according to the laws of the several countries, &c., have disposed, and all such lands, tenements, and hereditaments as he shall purchase, or shall descend, be devised, revert, or come to, such bankrupt, before he shall have obtained his certificate, and all deeds, papers, and writings, respecting the same; and every such deed shall be valid against the bankrupt, and against all persons claiming under him: Provided, that where, according to the laws of any such plantation or colony, such deed would require registration, enrolment, or recording, the same shall be so registered, enrolled or recorded; and no such deed shall invalidate the title of any purchaser for valuable consideration prior to such registration, enrolment, or recording, without notice that the commission has issued. [Sect. 26, 1 and 2 Wm. 4, c. 56, provides that the Bankrupt's *real* estate shall vest in assignees by virtue of their appointment without any deed of assignment from the commissioners for that purpose. Sect. 27 provides that where a conveyance would require to be registered, the certificate of the appointment of the assignees shall be registered.]

Bankrupt laws of England, proof of debts.—By the 6, Geo. 4, c. 16, s. 46, if any creditor shall live remote from the place

of the meeting of the commissioners, he may prove by affidavit sworn before a master in chancery, ordinary or extraordinary ; or if such creditor shall *live out of England*, by affidavit sworn before a magistrate where such creditor shall be residing, and attested by a notary public, British minister or consul ; and no creditor shall pay any contribution or account of any such debt.

Bankrupt laws of England, choice of assignees.—By the Stat. 6, Geo. 4 c. 16, s. 61, all creditors who have proved debts under the commission to the amount of ten pounds and upwards, shall be entitled to vote in such choice ; and also any person authorized by letter of attorney from any such creditor or creditors, upon proof of the execution thereof, either by affidavit sworn before a master in chancery, ordinary or extraordinary, or by oath before the commissioners *viva voce*, and in case of creditors *residing out of England*, by oath before a magistrate where the party shall be residing, duly attested by a notary public, British minister or consul ; and the choice shall be made by the major part in value of the creditors so entitled to vote : provided that the commissioners shall have power to reject any person so chosen who shall appear to them unfit to be such assignee as aforesaid, and upon such rejection a new choice of another assignee or assignees shall be made as aforesaid.

Bankrupt laws of England, the Surrender.—Sec. 112, Enacts. If the bankrupt does not surrender and submit to be examined on or before three o'clock on the 42nd day after the fiat has been issued against him, or does not make a discovery of his estate and effects, or does not deliver up his goods, books, &c., or removes and embezzles any of the same to the value of £10, that he shall be deemed guilty of felony, and be liable to be transported for life, or for such term not less than seven years as the Court shall adjudge. If in actual custody in Jersey or Guernsey, he may be removed by the Commissioners, Warrant under cover of an Order in Council.

Bankrupt laws of England, the Certificate.—The certificate is an instrument, whereby the commissioners certify to the Lord Chancellor their adjudication, the advertisement in the Gazette, the several meetings in pursuance of it, the bankrupt's surrender and conformity, and his having passed his last examination and made a true discovery of his estate and effects ; and that the certificate has been duly signed by the creditors both in respect of number and value. It is signed and sealed by the commissioners ; and the creditors sign a consent at the foot of it, to the commissioners signing and sealing it, to the

bankrupt's having such allowance and benefit as are given by the statute, and to his being discharged from his debts. *Its effect.*—First, by stat. 6, Geo. 4, c. 16, s. 121, every bankrupt who shall have duly surrendered and in all things conformed himself to the laws in force concerning bankrupts at the time of issuing the commission against him, shall be discharged from all debts due by him when he became bankrupt, and from all claims and demands hereby made proveable under the commission, in case he shall obtain a certificate of such conformity so signed and allowed and subject to such provisions as hereinafter directed [sec. 6, Geo. 4, c. 19, s. 122 ;] but no such certificate shall release or discharge any person who was partner with such bankrupt at the time of his bankruptcy, or who was then jointly bound, or had made any joint contract with such bankrupt. Nor does the signing the certificate of a surviving partner, release the estate of a deceased partner, [Sleech's case, 1 Merivale, 570.] The certificate will be a bar not only to actions for debts contracted in England, but to actions for the debts of Scotch creditors. [Royal Bank of Scotland v. Cuthbert. 1 Rose, 462,] of Irish creditors, and of all Foreign creditors. [Odwin v. Forbes. Brick 57.]

Bankrupt Laws of Guernsey.—See *Saisie*.

Bankrupt Laws of Jersey.—See *Décret*.

Bankrupt laws of Jersey, administration and division of Bankrupt's estate.—There are two modes in which a debtor may commit an act of Bankruptcy cognizable by the Jersey Laws ; [See *Décret*] the first is by surrendering to the Island prison in execution of a judgment debt, and the other by filing a declaration of insolvency before the Court, and moving for leave to give notice of his intention to renounce his property in a fortnight, which notice must be published in the French local papers, and posted at the door of the Court house. If the debtor surrenders to prison, he must be *reduit aux petits deniers*, i. e. be reduced to the smallest allowance usually called starvation point, at the suit of a Plaintiff, by an Act of the Court, on which he is said to become a *bankrupt*, and may then renounce to, or give up his property for the benefit of those to whom it may appertain. The law regards no distinction between the cases of trader and non trader : in a Bankruptcy under the Jersey Laws the only persons who share in the estate are judgment creditors duly registered, that is to say, those whose claims have been established before the *Jersey* Court, and whose judgments have been registered in the Book of Hypothecations and obligations kept by the Registrar of contracts. These creditors are said to stand in a similar situation to two

or more mortgagees of a property in England, but with this difference, that the rights of mortgagees are limited to the real estate specially mortgaged; whereas the rights of judgment creditors whose claims have been registered, extend to the real and personal estate of every description. In the case of a Bankruptcy or rather of a *Décret*, as it is called, the creditors are required by a public notice from the solicitor appointed to conduct the same, which is affixed to the door of the Court house, and inserted three weeks successively in the french local journals published on the market day, (Saturday) to bring in the amount of their claims, and their titles and evidences between then and a certain day, therein specified, that they may be inserted in the Bankrupt's schedule of *inscrans*. After this the *known* creditors are summoned by the solicitor to appear at the Greffier's Court to see the property adjudicated. In the list of *inscrans*, the names of creditors, amount of their claims, and description of their titles is inserted beginning with last first, and proceeding retrogradely according to the dates they were respectively recognized before Justice, and registered. Bills of exchange, book debts, and the like, which have not been registered, *all take one date*, without regard to the time they were contracted and which date is the day on which the schedule is ratified: they are placed at the top of the list. Bonds date from the day they were executed, if registered within ten days following, but if registered at a subsequent period, they date from the day they were left with the Registrar for registry, and to prevent a mistake a note of the day is usually made at the foot of the said Bonds. The creditors are *not* bound to prove their claims either by documentary evidence, or by affidavit as in England. When the schedule is completed and certified all the real and personal estate of the Bankrupt is adjudicated by a decree in one lot to the first creditor who shall accept it, when called upon according to precedence to do so or abandon his claim. The Greffier calls the names of the creditors beginning at the top of the schedule to take the estate of the Bankrupt and satisfy prior claimants—which of course is always refused by those first on the list, because the estate would then be too much encumbered. And even if it were not so, inasmuch as any or all of the creditors under that date may share in the tenure and thus become joint proprietors of the Bankrupt's estate, persons of substance forego their rights, lest by becoming associated with insolvent persons, they should be subjected to endless inconveniencies, which they would be, if a *Décret* should be declared against those parties:

consequently they are actually compelled to abandon their claims. Those creditors who neglect to attend and answer to their names, are represented by the Deputy Viscount, who renounces the estate on their behalf. The Greffier proceeds down the schedule striking off the names of the creditors as they respectively renounce to their claims, after which each has to pay the *Tenant* 7s. 6d. for his summons. When he has reached nearly the bottom of the list, and the estate has become disencumbered, a mortgage or judgment creditor, accepts the option, or demands a delay of not exceeding three weeks to consider the *then* state of the Bankrupt's affairs and what he is likely to pocket by the process. When a creditor accepts the option, he forecloses his mortgage on the Bankrupt's property, and takes every stiver he has in the world. The Greffier thereupon certifies the record and returns it into Court, where the adjudication is confirmed. This creditor is called the *Tenant*, and the tenure upon which the property is decreed to him, is, that he shall pay the expenses of working the *decret*, and those claims of a *prior* date which may be inserted in the schedule. From this it will be seen that all creditors whose claims are of a subsequent date, though inscribed in the schedule as well as all those that are not inscribed are excluded from any participation in the Bankrupt's estate. Consequently, if the Bankrupt had been a tradesman largely indebted to merchants & manufactures in England and elsewhere, say to the amount of £10,000, for which judgments had neither been confessed nor recorded in *Jersey*, being the latest debts contracted, and for the recovery of which no steps had been taken; all the merchandize, stock in Trade, and other effects which had actually been supplied by the english merchants and manufacturers would go to the exclusive benefit of the *Jersey* creditors, however few in number, or small in amount they may be! Not that the proceeds of the Bankrupt's estate would be *divided rateably* among them, but that the *Tenant* would have the *whole* estate, subject to his being *liable* to pay the expences of working the *decret*, and the prior claimants: thus supposing he were to pay those encumbrances he would be entitled to all the surplus. In such case the Tenant or Mortgagee who is put in possession, may realize, not only twenty shillings in the pound, but forty, sixty, eighty, and even a hundred! In fact, some have realized a bonus of £4 or £5000 to the prejudice and actual loss of English creditors. Indeed so rich is the harvest reaped on those occasions, that it often happens, that the attorney who conducts the *decret* or some other *ecrivain* speculates on the profit, by purchasing the

interest of such creditor, as may be in a good position to declare himself *Tenant*, and thus substitute him for his own advantage ! Many large fortunes have been made by this manoeuvre. Thus much for the *bright* view of the picture, now left us look at the dark side of it.

Sometimes a creditor will enter an action against his debtor for payment of a trifling claim, recover a judgment, and then (if not paid) let it stand over, without suing out execution to enforce satisfaction of the same, or getting it registered against the debtor's real estate, supposing he had any, and especially if he calculates on the debtors' becoming embarrassed at no distant period ; for it must be observed that if the claim be registered any when within ten years the judgment will be good, and if within ten clear days before a *desastre* or an Act of Renunciation be declared, it will generally be the *last* debt registered, and inscribed on the roll : and consequently will be the *first* to have the option to take the Bankrupt's estate or abandon his claim. Under such circumstances if there are but few registered debts and heavy amount of unregistered debts and assets, the creditor makes a handsome bonus, and instances are known by which this end has been accomplished for the mutual benefit of a creditor and the Bankrupt, by an understanding between them : for though the debt should have been discharged, the judgment may nevertheless be revived and registered ; when it will carry all advantages incidental to it, just the same as if it were a *bona fide* debt, as long as there is no act of the Court to show that it has been satisfied. But even if there should be no bonus apparent on the estate, but rather a deficiency, a creditor whose judgment has been registered, has it in his power, however small his claim may be, to make himself *Tenant* to the estate, if it should come to his turn to have the option, and this although it were notorious that he was himself insolvent at the time ! He might be supposed to give security for the proper administration of the property, and to act merely as a *Trustee* for the body of creditors whom the law has allowed to share in the estate ; but no such thing : he gives no security and is to all intents and purposes, the absolute owner, for his proceedings cannot be checked or controuled, nor can his accounts be subjected to any examination or revision whatever. And he is merely *liable* for the prior incumbrances before mentioned. See then what a field this offers for fraud, chicanery and swindling ? A creditor may make himself *Tenant* ; become *ipso facto*, the owner of the Bankrupt's real and personal property ; his houses, lands, and rents, or claims by way of mort-

gage, and arrears of interest thereon ; his shipping, merchandize, stock in trade, funded property, book debts, household furniture, and all other effects ; worth perhaps from 5 to £10,000 though his own claim should amount only to the paltry sum of £5 or less. He has the faculty of disposing of the whole of the property, without restraint. It is true, that those who purchase the real estate do it at their own risk, if the creditor be insolvent ; but not so with regard to the personal. He may and can without any difficulty find a market for this, and can convert it into money, without paying a single shilling to the prior claimants. He can ship and tranship the moveables to any part of the world ; he may sell them either by private contract or public auction, here or there, for little or much ; he may convert them into money, invest it in foreign securities, or appropriate it in any manner to his own private use and advantage : and the only remedy the prior claimants have is to enter an action at law against him to recover their dues ; which, he may, by a very little expence contest, and delay from time to time, for though he was not previously possessed of any tangible property, yet as *Tenant* to the Bankrupt's estate, he becomes proprietor of *Rente foncière*, and consequently his person and property are exempt from arrest and every process out of term time.—After litigating the claim, supposing a judgment be recovered against him, he can stay execution thereon. He has only to draw up a statement of his affairs, showing an apparent balance in his favor, and to move the Court for leave to place his property in the hands of Justice, to obtain a respite for a year and a day to arrange with his creditors, and as a matter of course it is granted ! Before the expiration of that period, he may leave the Island, and take refuge in another country, where perhaps, he had placed the property beyond the jurisdiction of the Jersey Court. Then another Bankruptcy takes place, and *his* estate is declared in *Décree*, or rather so much thereof, as shall remain within the reach of the law. This is adjudicated in the like manner and entails the like consequences. Thus the whole of the property *may* be expended in re-mounting of *Décrets* for the benefit of the lawyers, without any one creditor touching a single shilling of the estate ! ! !

Baptismal Registers.—A copy of a register of baptism in the island of Guernsey is not sufficient evidence in England of a party being of age. [*Huet v. Le Mesurier*, 1 Cox. 275.] An entry in the register of the christening of a child as to the time of its birth, is not of itself sufficient evidence of the age. [*Wiher v. Law*, 3 Stark. 63—*Bayley*.] An entry of birth of a

dissenter's child in a register kept for the purpose at a public library, is not evidence. [Exparte Taylor, 1, J. and W. 483.]

Bastards.—The remedy to enforce maintenance of, is by an *Ordre de Justice*, claiming damages for the lying-in and a weekly allowance for the support of the child for a period of 7 years. Bastards, according to the customs of the Island, founded on those of ancient Normandy, become legitimate offsprings, if the parents afterwards intermarry and acknowledge them, provided they were unmarried at the birth of such child or children; but it is an undecided question, whether a son so previously produced would inherit, in preference to one born subsequently to the marriage. The recognition is publicly made before the altar at the solemnization of the bands of matrimony, the children standing between the father and mother: an act or certificate of the recognition is afterwards entered in the parish register, and subscribed by the parents, the minister, &c. Women Strangers pregnant of illegitimate children must give bail that their offspring shall not become chargeable to the Island.

Benefit Societies.—The 10 George 4., c. 56, amended by 4 and 5 Wm. 4. c. 40, is *extended* to the Channel Islands by the 5 and 6 W. 4., c. 23, s. 10:—"And be it further enacted, that the provisions of a certain Act made and passed in the tenth of his late Majesty King George the Fourth, intituled, 'An Act to consolidate and amend the Laws relating to Friendly Societies,' and of a certain other Act made and passed in the fourth and fifth year of his present Majesty, intituled, 'An Act to amend an Act of the tenth year of his late Majesty King George the Fourth, to consolidate and amend the Laws relating to Friendly Societies,' shall extend to the Islands of Guernsey and Jersey and Isle of Man, and that the rules and alterations of rules of any Society established or to be established in the islands of Guernsey, Jersey, and Isle of Man, under the said last mentioned Act or this Act, shall be submitted to the barrister at law for the time being appointed to certify the rules of savings' banks in England." The above Acts were transmitted from the Council Office, with an Order dated Nov. 20, 1835, for them to be registered, and were registered on the public rolls Nov. 28, 1835. The rules of several of the benefit societies in Jersey have been certified, and enrolled by depositing a copy with the Greffier of the Royal Court. The following are among the benefits derived from a Friendly Society being enrolled under the 10 Geo. 4 c. 56. as amended by the 4 and 5 Will. 4 c. 40. 1st.—The Rules are binding, and may be legally enforced. 2nd.—Protection is given to the Members, their wives

and children, &c. in enforcing their just claims, and against any fraudulent dissolution of the Society. 3rd.—The property is declared to be vested in the Trustee or Treasurer for the time being. 4th.—The Trustee or Treasurer may, with respect to property of Society, sue and be sued in his own name. 5th.—Fraud committed with respect to property of Society is punishable by Justices. 6th.—Court of Exchequer may compel transfer of Stock, &c., if officer of Society abscond or refuse to transfer, &c. 7th.—Application may be made to Court of Exchequer by petition, free from payment of Court or Counsel's Fees, &c. 8th.—Disputes settled by reference to Justices or Arbitrators : Order of Justices or Award of Arbitrators final. 9th.—Power to invest their Funds to any amount in Savings Banks. 10th.—Power to invest their Funds with Commissioners for the reduction of the National Debt, and to receive interest at the rate of £3. 16s. 3d. p.c. 11th.—Priority of payment of debts, in case officer, &c. of Society become bankrupt, insolvent, has an execution, &c. against his property, or dies. 12th.—In case of death of Members, payment may be made of sum not exceeding £20, without the expense of obtaining Letters of Administration. 13th.—Members are allowed to be witnesses in all proceedings, criminal or civil, respecting property of Society. 14th.—Exemption of all documents, &c. from Stamp Duty. 15th.—All correspondence, &c., with Barrister free from postage.

Bigamy.—It is said that Bigamy is more prevalent in the islands of Jersey and Guernsey than in any other part of her Majesty's dominions, and it is accounted for by the fact, that the civil laws of the islands, derived from those of Normandy, take no cognizance of it, as a crime ; much less when the second marriage has taken place in a foreign jurisdiction. Our Bigamists have sufficient precaution never to marry the second wife or husband in the same country as they married the first, and what is still more, they take care to domicile themselves in another : for instance, if the first wife was taken in England or France, they marry the second in Guernsey, and reside in Jersey, or *vice versa*. By this manoeuvre, assuming that the second marriage, during the life of their first partner, might be deemed criminal, yet as the facts would have occurred in a foreign jurisdiction, and as the laws of one island cannot take cognizance of a crime committed in the other, they find themselves beyond the reach of punishment, to the great injury of public morals ! Nearly two hundred Bigamists are well known in Jersey alone, who revel in their iniquity with

perfect impunity ; some men having even three wives, and some women three husbands. The mode of proceeding in Jersey for Bigamy is to make a complaint to the Constable of the parish in which the offender resides, who draws up a report of the facts addressed to the Bailiff and Jurats, and hands the same to the Crown officer, who presents it to the Bench. Upon this the delinquent is seized and presented at the bar to answer the charge. It is treated summarily as a misdemeanor, and the punishment, (if the second marriage took place in the Island,) is by imprisonment or transportation to England. In the case of Le Boutillier, who married Mary Bouger, in Guernsey, his first wife being still living, the Jersey Court held, that as the second marriage took place out of their jurisdiction, they had no cognizance of the matter. In the Crown *v.* Le Patourel, 1839, the *Guernsey* Court, considering that *both* marriages were solemnized in that island, sentenced the delinquent to one month's imprisonment and two years' transportation to England ! If our bigamists were to remove to *England*, they would soon find their situation altered. Bigamy by the English law consists in contracting a second marriage during the life of a former husband or wife and the statute, 1 James I c. 11, enacts that the person so offending shall suffer death, as in cases of felony. [Sec. Hale's Pleas of the Crown, i. 692, fol. ed. 1736.] This statute makes certain exceptions which it is not necessary to refer to, as it has been repealed by 9 Geo. IV. c. 31. s. 22, and operates only with respect to offences committed on or before the 30th June, 1828. The statute last cited enacts " That if any person being married shall marry any other person during the life of the former husband or wife, *whether the second marriage shall have taken place in England or elsewhere*, such offender and any person aiding him shall be guilty of felony and be punished by transportation for seven years, or by imprisonment (with or without hard labour) for a term not exceeding two years." The statute excepts, first any, second marriage *contracted out of England, by any other than a subject of his Majesty* ; second, any person whose husband or wife shall have been continually absent from England during seven years, and shall not have been *known* by such person to have been living within that time ; third, a person divorced from the bond of the first marriage ; fourth, one whose former marriage shall have been declared void by the sentence of a Court of competent jurisdiction.

Bills of Exchange and Promissory Notes.—The following is a translation of the regulations, respecting Bills of Exchange

and Promissory Notes, adopted by the States and confirmed by His Majesty's Council in the year 1831 :—Article 1. All Bills of Exchange duly accepted, and all Promissory Notes payable to order, shall be paid on the day they become due, including the three days grace ; and in case of a refusal or of a default in the payment on the part of the debtors, it shall be at the discretion of the parties having right to demand payment of such Bills of Exchange or Promissory Notes payable to order, to seize, by means of an officer of Justice, the person or property of such debtors, notwithstanding they may have landed estates, and to proceed against them summarily as well in vacancy as in term time.—Art. 2. All Bills of Exchange and Promissory Notes payable to order, regularly protested for non-acceptance or non-payment, may be enforced against the drawers, endorsers and acceptors, (*signataires*) according to the form prescribed in the preceding article.—Art. 3. All Notes payable to bearer, shall be payable on presentation, and in case of refusal or default of payment, the holders may proceed against the issuers (*signataires*) in such manner as is prescribed by Art. 1, of these regulations.—Art. 4. The Acts or Judgments obtained out of term time against a debtor in virtue of the preceding articles, shall not take date in case of a decree but from the first day of the Saturday's Court of the ensuing term.—Art. 5. All persons are prohibited from putting into circulation or receiving in payment any Promissory Notes, payable to order, or Notes payable to bearer, for a sum less than one pound sterling, on pain of confiscation of such notes, and of a penalty of double their value. And those who may be the holders of such notes at the time of putting forth this regulation, shall address themselves to the issuers respectively, to receive the amount without being enabled to negotiate them to any other person or to make use of them in any other manner whatsoever.

Bills of Exchange and Promissory Notes, presentation of.—*See Notes of hand.*

Bills of Exchange not due, arrest to assure payment of.—In *Paur v. Martel* in 1838, which was an action to show cause why an arrest made on the person of defendant for assurance of payment of a Bill *not due*, drawn at 3 months date, and accepted by defendant, for £34 5s., should not be confirmed, the Court (*Le Quesne* and *Le Maistre*) held that, although the Bill had some time to run, yet, nevertheless defendant being expatriable, he was bound to furnish security for the fulfilment of his engagement.—Arrest confirmed.

Bottled Spirits.—By C. O., Dec. 6, 1833, bottled spirits are allowed to be exported from Guernsey to England in such of the regular traders, as are of 70 tons burthen and upwards, whether square-rigged or not.

Brandy, Geneva, and other Spirits.—By 4 and 5 Will. 4., c. 89, sec. 22, it shall be lawful to import into the Islands of Jersey, Guernsey, Alderney, or Sark, brandy, geneva, or other spirits, and tobacco, from foreign parts, in packages required by law, in ships of the burthen of seventy tons at least, and to export the like goods from the said islands in ships of the like tonnage.

British Fisheries.—Craft, food, victuals (except spirits) and materials fit for the British fisheries, may be exported. 6 & 7 W. 4. c. 60, s. 15.

British Possession.—It is declared in the 3 and 4, W. 4, c. 52 [Customs Regulation Act] s. 119, "that 'British Possession' shall be construed to mean colony, plantation, island, territory, or settlement."

British Possessions, Trade of, how regulated.—It shall be lawful for His Majesty, by any orders in council to be issued from time to time, to make such regulation touching the trade and commerce to and from any British possessions on or near the continent of Europe, or within the Mediterranean Sea, or in Africa, or within the limits of the East India Company's charter (excepting the possessions of the said company), as to His Majesty in council shall appear most expedient and salutary; and if any goods be imported or exported in any manner contrary to such order, the same shall be forfeited, together with the ship importing or exporting the same. 3 and 4 Will. 4., c. 59, P 81.

British Possessions in America, Trade to.—Goods the produce of the islands of Jersey and Guernsey are *not*, upon importation from thence into the British possessions in America, exempted from the payment of duties which are chargeable upon the like goods when imported from any foreign country; and goods the produce of the United Kingdom, when imported from the islands of Jersey or Guernsey, are liable to the foreign duty, it having been enacted by the 27th section of the act 3 and 4 William 4., c. 59, that no goods shall upon importation into any of the British possessions in America be deemed to be the growth, production, or manufacture of the United Kingdom, unless imported from the United Kingdom, or from some British possession in America. By the 3 and 4, W. 4. c. 52, s. 42, Commissioners of the treasury may permit goods the produce of the British possessions or fisheries in

North America, legally imported into Guernsey or Jersey to be imported into the United Kingdom for home use under such regulations as they shall direct.

British Ship, how navigated and manned.—No ship admitted to be British unless duly registered and navigated by a master who is a British subject, and by a crew, whereof three fourths at least are British seamen, whether in cargo or in ballast, for foreign voyages ; but if employed in the coasting trade, or between the United Kingdom and the Islands of Jersey, Guernsey, Alderney, Serk or Man, or in fishing on the coasts of the United Kingdom, or of any of the Islands, then the whole of the crew must be British seamen. 3 and 4, W. 4, c. 54, s. 12.

Burglary is punished by transportation to England (!) for a term of years, according to the nature of the case. If a gang of burglars be convicted at once, the old offenders are sent to different terms of imprisonment previous to their deportation, so that they may be shipped only one or two at a time, lest the landing and letting loose of a great number of convicts among the peaceful inhabitants of the neighbouring ports of England should give rise to any complaint !

Casting Vote.—In assessing the judgment of the Court, when the Bailiff finds the opinions of the magistrates equally divided he gives a casting vote, but in doing so he is bound to conform himself to the opinions of the Jurats, on one side or the other, however contrary it might be to his own opinion, or to the express letter of the law.

Cattle.—Horses and other beasts who shall die of old age or by accident, or which there shall be a necessity to kill, and causing a great infection, and alluring the dogs, if the owner's neglect to bury them, it is ordered that all persons, when cattle or beasts shall die of old age or by accident, shall be bound to bury them immediately, or at the latest within twelve hours, in order that a person may not be infected, and that the dogs may not come to them, on pain for contravention of ten livres penalty, half to the King and half to the informer : persons insolvent shall be punished at the discretion of Justice.—*Code, 1771.*

Cause of Action.—By the Law of Jersey as contained in the Grand Coustumier no man can be deprived of a single shilling of his property without first a formal averment of the Cause of Action, and then strict proof by two witnesses.

Causes, days for hearing of, are appointed by the Bailiff, but generally on consultation with the bench : if he refuses to name a day, the party desirous of bringing on a cause, may

present a remonstrance before the Full Court for that purpose. In *Le Breton v. Ennis*, 1839, defendant interjected a remonstrance complaining among other matters, that plaintiff having special days granted to him as Attorney-General, for hearing public causes, took advantage of the circumstance to bring on his own private suit on such of those days as when certain Magistrates were to be on the Bench, by which all the questions arising in it were determined by the same Jurats. The Court held the matter was not within their competency as the days were set apart by the Bailiff.

Causes, hearing of.—It is ordered, to avoid all confusion at the Saturday's Court, that persons being plaintiffs or defendants shall instruct their advocates before entering the Court, and before it be sitting; and that there shall be only the officers of the Court, the Gentlemen and members of the States, allowed to enter within the bars, before their causes shall be called by the Judge, upon pain of ten sous penalty. There shall be a table prepared by the Greffier on which shall be inscribed the causes of all persons (except those for the receipt of monies, and those of the Bailiff and his Lieutenant, of the Jurats and officers of the Court, of the Ministers for their benefices, of the Constable for the public affairs, of the Treasury, of Crime, of *Adjunction* (in which the crown officers are adjoined) which shall be affixed to the door of the Royal Court at nine o'clock in the morning, every day that there shall be a Saturday's Court, according to the order of which, six of the causes inscribed thereon shall be called by the Judge, upon which the persons who shall be interested shall be admitted within the bars and be subject to withdraw after they shall have been heard, under the penalty aforesaid, and those whose causes ought to be inscribed on the said table and who shall have neglected or omitted to place them thereon, shall not be allowed to pass them nor the defendants be obliged to give attendance.—*Code*, 1771.

Causes, passing of.—Causes at ordinary Courts, shall be passed according to a table which shall be as at extraordinary Courts; and the same fees shall be paid to the Judges as is used in the Court of Guernsey, and not more, that is to say, five sous; and the said table shall be publicly exposed the Saturday immediately preceding the day of Court, in order that persons interested in the said causes may be able to know the time when they shall be called and lose the least time possible; and after it shall have been publicly exposed, persons shall not erase or withdraw any cause, but they shall be called in the order in which they shall be inscribed, unless the parties

consent and the Bailiff allows it to be otherwise ; this rule shall not be understood as applying to privileged causes, or those which require expedition.—*Code*, 1771.

Caveat.—A requisition sometimes entered at the Council Office, to restrain the confirmation of a law enacted by the States, until the party has been heard by Counsel against it; something like a motion for an arrest of judgment. Any inhabitant who shall deem a law passed by the States, dangerous to public liberty, or an invasion of the rights and privileges of himself and fellow citizens, or should in any manner consider himself aggrieved thereby, is at liberty to lodge his *Caveat* at the Council Office, and to petition her Majesty not to grant the Royal Assent thereto until he has been heard. The following explanation of the practice is taken from the answer of the States to the Order in Council, referring to them the petition of F. Godfray, Esq., to his Majesty :—" The practice almost invariably pursued in their Lordships' office, upon a petition being presented to his Most Excellent Majesty in Council against any act of the States is, after such petition has been referred to their Lordships for their consideration, for them to order that a copy of such petition be transmitted to the States, and to require them to return an answer in writing thereto. Upon receiving such an order the States, at their first meeting, appoint a Committee of their body to prepare an answer or such other report upon the question as such Committee shall deem expedient, and there is this convenience in the practice, that the States have then the opportunity of reconsidering a measure which may have been objected to, and either altogether of repealing their act, or otherwise of remodelling it, so as remove the objections raised against it."

Centeniers originated from their anciently presiding over 100 families, like the Constable of hundreds in England. There are two in each parish who act as assistants to the Constable, and in his absence, the senior one performs his duty and represents him in the assembly of the States. The first is elected at the same time with the Constable, and the second about a week after. If the validity of the first be contested and the second be sworn into office he takes precedence. They are elected by the rated inhabitants and the office is triennial. The following is a translation of his oath :—You swear and promise by the faith and oath that you owe to God, that well and faithfully you will execute the charge and office of Centenier in the Parish of _____, you shall keep or cause to be kept the peace of her Majesty, opposing yourself and seizing

defacto, all mutinous and seditious persons, robbers, murderers, and all other persons who interrupt the course of the public peace, of which you shall inform the Constable in order that they may be presented in Justice to be punished according to their misdeeds—together with all hausters of taverns, drunkards, whoremongers, whores, blasphemers, and all others who contravene the ordinances ; you shall keep and preserve or cause to be kept and preserved as much as in you shall be possible. You shall see that no tavern be kept in your parish but by persons established and licensed from time to time, and shall take special care by you and by the officers, that the day of Sunday be not profaned by the haunting or frequenting of the said taverns or other places, contrary to the Ordinances in this respect made, which you shall put in due execution : You shall assist the Constable to search and cause to be searched at all times, when it shall be necessary, and you shall be thereunto required, and at least once in three months, in all places and houses of your parish which shall be suspected. You shall keep and preserve as much as shall be in you possible the rights which belong to the said parish, regulating yourself in that which concerns the well being of the same, by the advice and good counsel of the Principaux, of the Constable and other officers of the said parish. You shall assist the Constable in assembling the said officers once a month, and assemble them yourself whensoever it shall be required, to advise as to things necessary concerning the said parish, and that they may declare all misdoers, refractory and disobedient persons to the ordinances of Justice, so the Court and the Queen's officers may be informed thereof from time to time. You shall execute the mandates of the Governor, Lieutenant-Governor, the Bailiff and his Lieutenant, and the Jurats, in that which belongs to their offices respectively, assisting at the States of the Island when you shall be required ; and all this you promise to do upon your loyal duty and your conscience.

Certificate.—A bankrupt or insolvent's certificate of having conformed to the laws of England, is admitted by the Courts of Jersey and Guernsey to be a discharge to any debt proveable under the bankruptcy, or inserted in the insolvent's schedule.

Certificate of Produce.—Before any goods shall be entered as being the produce of the said Islands (if any benefit attach to such distinction), the master of the ship or vessel importing the same shall deliver to the collector or comptroller a certificate from the governor, lieutenant-governor, or commander-in-chief

of the island from whence such goods were imported that proof had been made, in manner required by law, that such goods were of the produce of such island, stating the quantity and quality of the goods and the number and denomination of the packages containing the same; and such master shall also make and subscribe a declaration before the collector or comptroller that such certificate was received by him at the place where such goods were taken on board, and that the goods so imported are the same as are mentioned therein. 3 & 4 W. 4., c. 52, s. 41.

Certificate of Production of Goods.—It shall be lawful for any person who is about to export from any of the islands of Guernsey, Jersey, Alderney, or Sark, to the United Kingdom, or to any of the British Possessions in America, any goods of the growth or produce of any of those islands, or any goods manufactured from materials which were the growth or produce thereof, or of the United Kingdom, to go before any magistrate of the island from which the goods are to be exported, and make and sign before him a declaration that such goods, describing the same, are of such growth or produce, or of such manufacture, and such magistrate shall administer and sign such declaration; and thereupon the governor, lieutenant-governor, or commander-in-chief of the island from which the goods are to be exported shall, upon the delivery to him of such declaration, grant a certificate under his hand of the proof contained in such declaration, stating the ship in which and the port to which, in the United Kingdom or in any such Possession, the goods are to be exported; and such certificate shall be the proper document to be produced at such ports respectively in proof that the goods mentioned therein are of the growth, produce, or manufacture of such islands respectively. 3 & 4 Will. 4., c. 59, s. 86.

Certiorari, a prerogative writ issuing from the Court of Queen's Bench to remove proceedings into that Court. It lies to the Islands of Jersey and Guernsey especially in cases where the Crown is concerned, and is provided for in the Constitutions of King John, which is the Magna Charter of both Islands: the 7th Art. says "If the King may be willing to be *certified of the record* of any plea determined by the Justiciars and the twelve, the Justiciars and the twelve shall make the record: and of pleas determined by the bailly and the twelve, they shall conjointly make the record." It would seem however that when the *Judges of Assize* (who formerly came here) shall have taken cognizance of a matter, a certiorari will not lie or at all events not until *after judgment*, for the 8th Art. says, "that no plea begun

before any of the Justiciars shall be adjourned to any other place, but altogether determined within that isle." By the 6 Geo. 2. c. 19. s. 2. no certiorari is allowed to remove any judgment or order unless the party before the allowance shall enter into a recognizance with sufficient sureties in £50 to prosecute it with effect at his own costs and pay costs if confirmed; and on refusal to enter into such recognizance, the Justices may proceed. By s. 3. these recognizances are to be entered into in the Court of Queen's Bench and may be enforced by process of attachment. By 13. Geo. 2. c. 18. s. 5 the time for applications for writs or certiorari is limited to six calendar months. A certiorari always lies to remove proceedings under penal statutes, unless it is expressly taken away; and an appeal never lies unless it is expressly given by the Statute. *Rex. v. Cashibury* (Justices), 3 D. and R. 36. It does not lie to remove a recognizance. *Anon. Loft. 312*, Nor for other than judicial acts. *Rex. v. Lloyd, Cald. 309*. A certiorari to remove proceedings from the Courts of the counties palatine was not to be granted of course, and without special ground, *Zinck v. Langton*, 2 Dougl. 749. Nor to remove proceedings in the Courts of great sessions in Wales, without special cause. *Williams v. Thomas*, 2. Dougl. 751. n. By the 21 Jac. 1. c. 23, s. 4. and 21 Geo. 1. c. 29, s. 3. a certiorari does not lie to remove a suit from an inferior Court, where the thing in demand does not exceed £5. Nor by 7. and 8. G. 4. c. 71, in causes under £20 unless a recognizance be entered into in the Court below. A certiorari cannot be taken away by any general but only by express negative words. *Rex. v. Reeve*, 1. W. Black. 231. A statute taking away a certiorari does not take it from the Crown unless expressly mentioned. *Rex. v. —*. 2 Chit. 136. S. P. *Rex. v. Davies*, 5. T. R. 626. and see *Rex. v. Tindal*, 15 East. 339. n.

Cession-general. de tous les biens meubles et heritages, or general cession of all real and personal estate, which a debtor makes for the benefit of his creditors, to release himself from imprisonment. There are two formalities required to be observed by a person who applies to make cession; one is, that he shall be a prisoner for debt on short allowance, (24d per diem) but it is not necessary that he should be in actual custody: the other is, that he shall have obtained permission of the Court to give fifteen days notice of his intention to apply for leave to make cession; which notice is not served on the creditors, as in England, when a debtor seeks relief from the Insolvent Court; but is merely posted at the door of the Court-house, and inserted in the *french* newspapers, published

on the Saturday. If leave be granted, the debtor immediately takes oath, that he acts thus for want of means to satisfy his creditors, and thereupon delivers into the hands of the Greffier, all titles, documents, and evidences concerning his property, under his signature, but executes no assignment of the same : he is then discharged from all debts and obligations contracted before making the cession. [See law on *Décrets*, Art. 8, 9 and 10.] The following is a translation of his oath :—" You swear and promise by the faith and oath that you owe to God, that the general cession which you make of all your moveable goods, and lands, is for want of means to satisfy your creditors. Also that you will deliver into the hands of the Greffier of the Royal Court of this Island, all your rights, papers and evidences, for the preservation of the right to whom it may appertain." Thus much for the Insolvent ; let us now consider, what becomes of his property : and here it must be observed, that though he makes a *general* cession of all his estate and effects, it is not for the *general* benefit of his creditors ; but only for those few to whom it may appertain. The next question is, who are those few—who are those creditors that the Jersey laws allow to share in the insolvent's estate ? Now this depends entirely on the nature of his assets. If he be possessed of any *landed* property, or rents, that is mortgages on lands ; his estate and effects, pass through the process of a *décret*, and is adjudicated in one lot, to such registered creditor as shall become *tenant* thereof, subject only to his paying the expenses of working the *décret* and prior claimants ; all others being excluded from any participation in the estate. [See *Bankrupt laws of Jersey, administration and division of Bankrupt's estate.*]

If the debtor has no real property, but only *personal* estate, it goes to the exclusive benefit of those creditors who shall have levied attachments on the same. In that case, the effects are sold before an officer of Justice, immediately the arrests are confirmed, and the proceeds are divided among the attaching creditors, until they are paid in full together with the costs, leaving the surplus (if any) for the absentees. There is no assignee appointed to distribute the estate, as in England, nor is there any provision made by law to protect the rights of absent creditors, not represented by power of attorney, as there usually is in the Colonies and other possessions abroad ; where public notices are given in the *English* as well as in the local newspapers, and also in the London Gazette, setting forth, that the debtor is insolvent, and that his property has been sequestrated for the benefit of *all* his creditors—who

are required to come in and prove their claims before a certain period, which generally varies from six months to a year, before the judicial sale and distribution of the proceeds take place. Here, although a tradesman may be largely indebted in London, Bristol, Manchester and Birmingham, or a merchant may have heavy claims against him in England, the West Indies, Newfoundland, and the Brazils, (countries with which the principal commerce of the Island is carried on) no regard is paid to the rights of those creditors; they are one and all sacrificed at the shrine of that altar, whose inscription is "first come, first served." The notices being published only in the *French Journals*, whose circulation is limited to the Island, and no notices being sent by letter, besides which, the shortness of the time allowed, almost precluding the possibility of any communication being made to absent creditors, it follows as a matter of course, that the insolvent has nothing to fear from their opposition when he applies to the Court for leave to make cession, as they are kept in perfect ignorance of his proceedings: all he has to do is, to regard those who live on the spot, and he generally contrives either to make some kind of arrangement with them, or to leave sufficient assets within their grasp—so that no opposition may be made to his cession; for it must be known that he cannot apply at all until the Plaintiff at whose suit he is arrested, shall have put him on short allowance, and even then the adjudication is not summarily disposed of as in England, but any creditor may advance this or that pretension as regards his means, when as matter of course, the case is always sent to proof, which causes a delay of five or six months, and even if judgment should be given in his favor, the Plaintiff can appeal to a full Court, which prolongs the adjudication for a year or two, and if the debt be of sufficient amount, plaintiff can appeal from that judgment to the Privy Council, which generally takes five or six years before it is brought to a hearing, during all which time the Insolvent can be kept in prison at 2½d per day! From this it will be seen, that necessity actually compels the insolvent to show an unjust preference towards his Jersey Creditors at the expense of those living out of the Island, in order to avoid their opposition, and that he might extricate himself from prison before the others are acquainted with his situation. We proceed: not only does this system operate most unjustly towards absent creditors, when debtors who have been domiciled in the Island make cession, but it offers great inducements for strangers—fraudulent traders in England, to fly from their own country and take refuge here, where they can get a

friendly arrest and pass through the process of making cession in about a fortnight, unknown to their English creditors, (seeing that having no Jersey creditors, they are not opposed) without giving up any part of their property, and where they can afterwards live unmolested, the remainder of their days, on the proceeds of their illgotten wealth. *Exempli gratia.* Mr. M. S., broker, formerly of Fenchurch-street, London, who had contracted debts to a large amount in England, came over to the Island in 1837, with the goods, sold part of them by public auction, pocketed the money and secreted the remainder : got a *friend* to arrest him, went inside of the prison and came out again under bail from the *same* party ; was a few days afterwards put on short allowance, though not in custody ; gave the customary notice in the French Journals, and was subsequently brought up to the Court to make cession of his property for the *benefit* of creditors, without producing any books, papers or documents, and without giving up a solitary penny ! Aye, and the same person boasted on the same evening of having one hundred pounds in his pocket !!! If such a system as this is tolerated much longer, the Island will eventually be peopled by the rogues, vagabonds, and criminals of other countries ! It is worthy of remark, that the same solicitor managed the business for both plaintiff and defendant in that case.

We must now go back to the *formalities* which we mentioned in the onset, it was necessary to observe, on applying to make cession : and here we might remark, that this necessity is not always enforced, for much depends on who may be the Jurats on the bench, and who may be the parties before the Court. Take the following cases for example :—In the case of Mr. C. M., guardian of the children of P. H., 1836, who was sued to hear confirmation of his arrest for payment of £1 9s. 6d. : he pretended he had no means of payment, produced a statement of his debts as guardian, together with a *soussigné* or authority from the electors to renounce the estate of his wards. Motion having been made, the Jurats D'Avranche and Bertram granted leave for the guardian to renounce, although he had not given notice of his intention in the French local Journals fifteen days previously, nor had obtained an act of prison : nor had the act announcing his intention to make cession been posted at the Court-house, all which formalities the law required. In this case Mr. M, was appointed guardian on the 28th May, gave the promissory note on the 31st, to his own brother-in-law, and renounced to the property on the 4th June, following : thus involving the estate in an expense of

from £60 to £80 sterling, to work a *decret*, to recover payment of £1 9s. 5d !!! In the case of Miss M. A. B. v. Mr. J. B., defendant was arrested in Jersey, on an *ordre de Justice*, for payment of the sum of £700, in satisfaction of a judgment recovered against him in the Queen's Bench, in England, and whilst a prisoner in actual custody, having first conformed to one formality only, that of giving a fortnight's notice of his intention, he applied to the Court for leave to make cession, but was opposed by the plaintiff. In consequence of this, and to prevent having recourse to any process for removing the cause to England, it was agreed and recorded that defendant should accompany plaintiff's agent and surrender himself to a prison in England, within one month from that date (Nov. 24, 1838) to enable him to seek such relief as the laws of England might afford him. The defendant went to Southampton and on his landing there, was arrested afresh in execution of the judgment and committed to the Southampton prison, where he remained in actual custody several weeks. After awhile, the debt was compromised, and thus ended the suit. Mr. B. returned to Jersey on Thursday, Jan. 24, 1839, and on the following Saturday, anticipating that his other creditors in England might sue him thenceforth, went before the Court, and applied again for leave to make cession, though not in custody, and had not been reduced to short allowance when in custody, and though there was no action against him, and in fact no cause then before the Court, in which he was a party ; yet nevertheless it was granted by the Jurats D'Avranche and Bisson, and this, without asking any questions ; without any documents being delivered up, and without any statement of property being made, and in short without any one formality being then fulfilled whatever.

Cession, Certificate of.—The certificate of cession granted by the Courts of Jersey and Guernsey is a discharge from all debts contracted in the Islands, if the party should be sued before any of the Courts of Law in England ; but it is necessary to observe, that a very erroneous opinion prevails among traders as to what debts are contracted in the islands. Their principal commerce is carried on with England, and goods are generally purchased by samples brought hither, or by letter, or by periodical visits to the great marts for manufactures. Now these goods being delivered to a waggoner, or consigned to an agent, on the buyer's account, are in judgment of law, delivered to the vendee in England, and consequently the cause of action arises there, and not in the islands. This point has been repeatedly decided in the English Courts ; as for example :

—Where a person in Aberystwith gave an order for goods to a traveller of the plaintiff, resident in London; held, that it must be presumed that such goods were to be sent in the usual way, and that, on their delivery to a carrier in London, a cause of action arose there. [Copeland v. Lewis, 2 Stark, 33—Ellenborough.] Delivery of goods by the vendor on behalf of the vendee to a carrier, not named by the vendee, is a delivery to the vendee. [Dutton v. Solomonson, 3 B. & P. 582.] Goods, consigned to a merchant in a foreign country, are stated in the bill of lading to be shipped by order and on account of the consignee, the consignor cannot maintain any action against the ship-owner in respect of the goods, as the property must be taken to have vested in the consignee from the time they were put on board the ship. [Brown v. Hodgson, 2 Camp. 36, Ellenborough.] Seeing then that by the sale and delivery of goods in England, a debt is created, the first question is, *where* is it payable, in Jersey or in England? We maintain in England, at the vendor's usual place of business, unless an express agreement has been made to the contrary; consequently, if a trader in Jersey, purchased goods of a merchant in London, he has impliedly entered into a contract to pay for the same at the place where they were purchased; and especially if he accepts a bill for the amount made payable in England. The next question is, whether a certificate of cession granted by the Courts of Jersey and Guernsey, is a discharge to *such* contract, and can be pleaded in bar to an action in England. We maintain that it is not; for it is a well established principle, and one that has repeatedly been recognized by the English Courts, that a certificate of cession obtained in a foreign jurisdiction is not a bar to an action in England for the fulfillment of a contract which accrued, or was to be executed there, although, at the time of making the contract, the cessionaire or bankrupt resided in the country where he obtained his certificate; [Quin v. Keefe, 2 Hen. Bl. 553.] but if the cause of action accrued in that country, and the contract was made there, a certificate obtained where the cause of action accrued, or the contract was made, would then be a bar to an action in England. [Potter v. Brown, 5 East's Rep. 124.] This point has been settled in a variety of cases, as may be seen by the following: A certificate obtained by a bankrupt in Ireland, or any foreign country, will be a bar to an action in this country for a debt contracted in *Ireland* or the *foreign country*; [Ballantine v. Golding, Cook 487.] *but not to an action for a debt contracted here.* [Smith v. Buchanan, 1 East.] Where the plaintiff

gave the defendant in a foreign country, where both were resident, a bill drawn by the defendant upon a person in England, which was afterwards protested here for *non-acceptance*, and the defendant afterwards while still resident abroad, became bankrupt there, and obtained a certificate of discharge by the law of that State; held, that such certificate was a bar to an action here upon an implied assumpsit to pay the amount of the bill there, in consequence of such non-acceptance in England. [*Potter v. Brown*, 5 East. 124, 1 Smith, 351.]

Chase, regulations of the.—It shall not be permitted to any one to hunt or sport before the 1st of October each year nor longer than the 1st day of February, on pain of twenty livres penalty. It is forbidden to all persons to sport on Sundays or market days at any time of the year on pain of thirty livres. No other persons than those who have a right to hunt shall upon any pretext keep any sparrowhawk, grey hound, terrier, setter, or any other sporting dog on pain of 20 livres penalty. Those who have not the right to hunt shall not introduce into this island any ferret, nor buy, keep, or use them, and those who shall have the right of Sporting, shall not procure them without giving notice of their intention so to do, and obtaining the approbation of the Court, upon pain against the one or the other of fifty livres for each ferret introduced or kept, or made use of contrary to this regulation. Those who have no right to hunt, shall not carry a gun to kill or destroy game, upon pain of 20 livres, nor go hunting by night on pain of forty livres. Neither shall they keep nor use, trails or other nets, snares, collars, traps or instruments, to destroy game on pain of fifty livres; and the Constables and Centeniers shall be bound in their respective parishes to assist the King's Officers, the Master of the Chase and the Seigneurs of the fiefs, each on his manor to search in suspected houses, and to seize any of the engines or snares. It is forbidden to all persons to stop up at any time the burrows; and those who shall not have right to hunt, to kill, take or destroy any hare on pain of fifty livres; and to all without exception to destroy or carry out of this island, live partridges, without the permission of the Governor and of the Court, on pain of 100 livres penalty, and to destroy young partridges or the eggs of partridges upon pain of twenty livres. It is likewise forbidden to all persons to shoot, take, or destroy pigeons, upon the like pain of 20 livres. Penalties imposed on those who contravene shall be applied half to the king and the other half to the poor of the Parish where the offence shall have been committed: and the Master of the Chase, and the

Seigneurs of the fiefs for the faults committed on their fiefs shall be entitled to claim an equal penalty with the King. Persons contravening shall be convicted by their confession or upon the oath of one or more witnesses and shall be condemned for the second offence if they show contempt, to the respective penalties or be subject to imprisonment if insolvent; but they shall not be subject to any prosecution after the expiration of a year from the offence.—*Code*, 1771.

Chancellor's Commission for taking evidence on a bill in Chancery is available in the Islands.

China and India Goods.—East India price goods may be removed by land carriage from London to Southampton, for the purpose of exportation to Guernsey, Jersey, and Havre.—T. O. 31 August, 1836, and C. M. 20th September, 1834.

Choses in Action are not assignable.—*Code*, 1771.

Church Treasure.—See *Trésor de l'Eglise*.

Churchwardens.—The week next after Easter the Minister and Inhabitants of each Parish annually choose two Churchwardens, discreet men of good conversation and capacity. If they cannot agree in the election, the Minister has the power to name one, and the Parishioners another, by a majority of voices. They are sworn on the first day of the Ecclesiastical Court, following, and admonished of their duty, which is of a similar nature to that of English Churchwardens. Their accounts are audited in the Easter week before they quit office, and signed by the Minister and Chiefs of the Parish.

Citations to appear before an ecclesiastical court in England are as valid in Jersey, as in any part *belonging to the diocese* of Winchester.

Clameur de Haro, (corrupted from *Rou* the name by which Rollo was called in French) was instituted by the Duke of Normandy of that name, and was meant to compel all who heard it to fly to the relief of the exclaimor, or to desist from their illegal proceedings. This custom which was venerated nearly a thousand years, is now getting obsolete. It is a remarkable feature in this process, says Mr. Durell, that it is carried on by the Crown, and that the losing party whether plaintiff or defendant is mulct in a small fine to the King, because the sacred name of *Haro* is not to be carelessly invoked with impunity. It is the ancient form in Jersey to oppose all encroachments on landed property, and the first step to be taken, by which an ejectment may be finally obtained. It was decided in the case of *Pinel v. Le Gallais*, that the *Clameur de Haro* does not apply to the opposal of the execution of a decree of the Royal Court.

tion, or that they shall have some other legitimate excuse, which shall not be received unless they send a person to excuse them on oath, on pain of 100 sous penalty, which shall be levied by the Viscount, and applied according as the States shall direct. They shall be obliged to assist at the States in person if they shall not show good excuse, on the preceding penalty, and the Centeniers shall not be received for them but in case of indisposition, absence from the island, or other reasonable excuse. They shall be bound to make report of and present to Justice all persons contravening the ordinances and rules established for the good order of Society, and assemble their officers once in three months, in order that they may the better ascertain the offences which shall have been committed, and be able to know the delinquents, according to the express tenour of the oath of office. They shall not continue in their office, nor the Centeniers and Venteniers more than three years, unless they shall consent to officiate, and after that term, the King's Officer shall apply to the Court, who shall order a new election according to custom."

The following is a translation of the oath the Constable takes on being sworn into office: "You swear and promise by the faith and oath that you owe to God, that well and faithfully you shall execute the charge or office of Constable in the Parish of ———, you shall keep and cause to be kept the peace of her Majesty, opposing yourself and seizing *defacto* all mutinous and seditious persons, robbers, murderers and all other persons who shall interrupt the course of the public peace, whom you shall present in Court, to be punished according to their misdeeds; together with all haunters of taverns, drunkards, whoremongers, whores, blasphemers and all others who shall contravene the ordinances and commands of the Magistrates, which ordinances you shall keep and observe, or cause to be kept and observed, as much as in you shall be possible: you shall not suffer in your parish any person to keep a tavern, other than those established and licensed from time to time, and you shall take especial care by you and by your officers, that the day of Sunday be not profaned by haunting or frequenting taverns, or other places contrary to the ordinances in this case made, which you shall put in due execution; you shall search or cause to be searched at all times, and when it shall be necessary, or that you shall be required, namely, you shall make a general search once in three months, in all places and houses in the said Parish, which you shall suspect: you shall preserve and maintain as much as in you shall be possible, the rights which belong to the said

Parish, regulating yourself in that which concerns the well being of the public of the same, by the advice and good counsel of the Principaux and other, the officers of the said parish, which officers you shall assemble or cause to be assembled by means of your Centeniers once a month, to advise as to things that may be necessary concerning the said parish, and lastly that that they may declare all misdoers, refractory and disobedient persons to the ordinances of Justice that you may inform the Court thereof and the Queen's Officers from time to time : you shall execute the mandates of the Governor or Lieutenant Governor, the Bailiff or his Lieutenant and the Jurats, in that which shall belong to their offices respectively, assisting at the States of the island, when you shall be thereunto required : and all this you promise to do upon your loyal duty and your conscience."

Constable, his domicile.—In the case of *Vincent v. Le Bas*, in 1838, the Court (Le Quesne and Duhamel) decided that the defendant who was not domiciled in St. Brelade's, nor assessed to the rates of that parish, was nevertheless not ineligible for the office of Constable, to which he had been elected by a majority of 18 votes over the plaintiff. The jurats grounded their decision on the following precedents : the case of Aaron De Veuille, esq. domiciled in St. Helier, elected Constable of St. Clement, John Renouf domiciled in St. Helier, elected Constable of St. Mary, and Mr. Dumaresq domiciled in St. Ouen, elected Constable of St. Mary.

Constable, responsibility of.—In the case of *Messrs. Godfray v. Nicolle*, Constable of St. Helier, the Court held him responsible *personally*, for alleged misconduct in his official character. The same doctrine was held by the Court in the case of *Sutherland v. Le Bas*, and in the case of *De Camp v. Le Couteur*, Constable of St. Brelades, (1830) who was absent from the Island ; the Court held him personally responsible for an alleged outrage, and ordered that he should plead to the action by his administrator.

Constable's Report.—In cases where persons commit a breach of the public peace, or other outrage, the Constable is bound to apprehend the party, and in default of good and sufficient surety for their appearance before justice when required, he is empowered by the sanction of a magistrate to commit them to prison. He must present them at the bar of the Royal Court at its first sitting, with a written report to the Bailiff and Justices of the facts of the case, as they have come to his knowledge. In the case of *Henry Vidamour and Mary Le Lachour* his wife, (1835) the Constable of St. Helier presented

them at the bar of the Court for certain outrages : his *report* set forth that he had lodged them in goal, but it did not state that it was by permission of a jurat, which was contrary to usage. The King's Procureur held that the omission was not an informality, for the Constable was not bound by any law to mention that fact. The Court overruled the opinion, and decided that the report was informal and dismissed the prisoners.

Coals may be exported to the islands of Guernsey and Jersey for the purpose of re-exportation from those islands to foreign parts, upon the exporter expressing the same in his entries outwards, and paying the duty as in cases of direct exportation from the United Kingdom to such parts, and upon the arrival of such coals at Guernsey or Jersey entries must be passed for the same, in virtue of which the importer thereof will be allowed to export any quantity (not exceeding the quantity so imported) by regular entries, provided such exportation be made within twelve months from the importation thereof into those islands.—T.O. 18th July, 1826, and 19th July, 1831. If the master of a vessel delivers coals without the presence of a public meter, he is liable to a penalty.

Commissioners appointed by the King to inquire, examine, and report upon alleged grievances, have in themselves no legislative authority.

Contempt.—In the appeal before the Privy Council, Advocate Godfray v. Royal Court of Jersey, Lord Brougham said 'That a party may commit a contempt and call down punishment on him as a party is undeniable, although a Court would be very slow to hamper a party acting in the situation of defending himself ; but that the Court might punish for a contempt there could be no doubt. If the party happened to be an Advocate, then the Court might deal with him as an Advocate ; the Court could doubtless punish a man for contempt as a party, the same as though he were an Advocate.'

Contracts passing of.—The passing of a contract, in this Island, is, in some cases, tantamount to the execution of a deed in England, to transfer real property ; in others, it is similar to the executing of a deed of mortgage ; and in other instances, a contract is the means of conveying the mortgage to a third party, or the acknowledgment to the mortgagor, that the debt on the estate is satisfied. Contracts are written on parchment by the *Ecrivains* of the *Cour Royale*, and instead of being signed, sealed, and delivered, by the parties thereto, (as is the manner of executing deeds in England) they present themselves before the Court, composed of the Bailiff and two Jurats, who

administer to them an oath, that they shall fulfil, and abide by, the conditions contained therein, when the Bailiff and Jurats sign the deed as a record of the same ; so that unlike deeds executed in England, the signature of the parties is not required, the Contract becoming an act of the Court, testifying that the parties have consented to all the terms and conditions therein specified. Immediately after the Bailiff and Jurats have *signed* the contract, it is handed over to an officer, styled the *Enregistreur*, whose duty it is to copy it in the book of Public Registry ; after which he marks on the contract, the volume and folio in which it is registered—all deeds are void which have not been registered within six months after they have been passed before the Court. By means of this registry, it is easy to ascertain what mortgage exists against any property ; and as it is open to public inspection , at fixed and comparatively low rates, persons wishing to purchase, can easily ascertain the incumbrances on the property they may wish to acquire, and the validity of the title takes date from the time of their registration. The fees of the *Enregistreur* are settled by an Order in Council. After they have been registered, the contracts must be *sealed* with the Public Seal of the Island. This is done two days in each year, on the opening of the sittings of the Court of Heritage ; but if any deed requiring it, should be presented in the intermediate term, the Bailiff in the presence of three Jurats, may open the bag in which the seal is kept sealed up, to prevent its being fraudulently used, and affix it to the contract. The Bailiff and Jurats are entitled to certain *fees*, on the passing of Contracts. At the times publicly fixed upon for that purpose, the fees are, for each contract—Bailiff, one shilling and six-pence ; and the the two assisting Jurats, two pence each. Some contracts are called *double* contracts : they are those which transfer houses or lands, or mortgages to a certain amount : on these, the fees are increased—the Bailiff's to two shillings and six pence, and the Jurats' to four-pence each. But contracts may be passed at other times, and also in other places, than the Royal Court ; and which is frequently done in cases of illness, or where any reasons may exist to make it desirable to have them passed before the public day. Whenever this is the case, the fees are increased still more—the Bailiff's to 5s. 6d, and the two Jurats' to 2s. 6d. each., whether the contract be single or double. All fees are paid in English money ! On the public days, there are frequently from 200 to 300 contracts passed, so considerable are the mutations of property in the Island. The *Ecrivains*, in making their charge for preparing a contract, are governed by the

amount they have to pay the *Enregistreur* ; to this they add double whatever it may be, which covers all expence, if the contract is passed on the regular days ; but if passed at any other time or place, the *extra* fees are added. When compared with the cost of title deeds in England, this system will be found much less expensive : London conveyancers will be amazed, when they learn that the finest estate in the Island of Jersey may be conveyed for a sum not exceeding £5—yet we can assure them, such is really the fact. The following is the oath which the parties take :—You swear and promise by the Faith and Oath that you owe to God that you will not do or cause to be done any thing contrary to the present contract of sale or agreement of partition on pain of perjury.

Conveying Property.—Real property can only be conveyed before the Bailiff and two Jurats, which may be done in private ; for a party proposing to alienate or burthen it is not required to give any notice of his intention to do so, for creditors to oppose the transfer, until their debts are secured. Moveable property may be conveyed or mortgaged in this manner or by private delivery. If moveable property be not conveyed before the Bailiff and Jurats, and the mortgagor continue in possession it might be deemed fraudulent against third parties.

Convicts are generally transported for three, five, or seven years, at the expence of the States, if natives of Guernsey, to that Island, and all others to any port in England, which the convict shall choose, and there set at liberty. If they return before the expiration of the term, the sentence is increased, and the convict whipt and sent back. It is said that there is no *Law* which empowers the Court to transport *natives* of this Island, or of any other British possession abroad to England. If the sentence be for seven years' banishment, it carries with it the confiscation of all real and personal estate to the crown or the Lord of the fief upon which the crime was committed. Convicts do not forfeit their rights to any future acquired property as in England.

Corn and Flour.—The exportation of corn and flour, the produce of the island to the United Kingdom, free of duty, is regulated by an act of the States, passed the 31st Aug., 1837, which not having received the royal assent, will expire on the 30th Aug., 1840. This act requires that every grower of corn shall deliver to the Constable of the parish, a declaration of the quantity of land he has sown with corn—that every person who exports corn or flour, of his own growth or produce, shall declare on oath before a Jurat, the number of vergées of land which he has sown with corn—that the corn or flour ex-

ported is of his own growth or produce ; which declaration is to be sent to the Customs, on pain of the said *corn* or *flour* being prohibited from being exported, as native produce—that every person who exports corn or flour which he shall have bought as native growth or produce, shall make a declaration on oath, before a Jurat, setting forth the names of the persons of whom he bought it, and shall transmit the same with their declaration under the before mentioned prohibition. Penalty for falsifying or using a declaration knowing it to be false, £100—one-third to the Queen, one-third to the hospital, and one third to the informer.

Coroner is the Viscount or his Deputy who holds inquests on all sudden and violent deaths, the expences of which must be paid out of the estate of the deceased, and if a pauper, by the parish in which he dies.

Costs.—Advocates and Solicitors charge what they please, for retainers, conferences, writing of letters, &c. Such costs are never taxed though they might be by the Greffier or Clerk of the Court, who exercises the duty of a Tax Master—See Order in Council, 10th March, 1824.

Court-house.—It is forbidden to all persons to throw stones or other things against the windows of the Court house or upon the said Court house, on pain of ten livers penalty for every contravention, and the broken windows or any other damage, shall be repaired at their expence ; masters being subject to answer for their servants, and parents for their children.—*Code*, 1771.

Cour d'Heritage, opening of.—Conformably to certain orders of the King and Council, one of the 24th April, 1668, enrolled at the States the 10th July following, and the other the 19th May, 1671, enrolled at the States the 27th July following, and of a subsequent one, dated the 12th March, 1690-1, enrolled the 13th August following. The ordinary Courts of Heritage and Catel, shall not be put off without indispensable necessity. The same number of Judges are to assist as it was used formerly, that is to say, three at least at the ordinary Courts, and two at the extraordinary, without power to withdraw, unless by the permission of the Chief Magistrate. The Judges and the other officers of the Court, are to accompany the Bailiff or his Lieutenant from his apartment to the seat of Justice, and shew respect to him as representing the person of His Majesty and as his first Minister in that respect, and particularly when he is in Court or executing the duties of his office ; the delinquent shall be suspended, if he is a judge or other officer, and all others shall be punished by imprisonment until they shall

have repaired their fault by demanding pardon and paying the pecuniary penalty which shall be imposed according to the nature of the offence.—*Code, 1771.*

Court no power to make Laws.—The Master of the Rolls on pronouncing the judgment of the Privy Council, on an appeal from the Court of Jersey to that tribunal, in the case of *Du Heame v. parish of St. Ouen*, declared that the Court of Jersey cannot make a new law.

Copyright—Authors and Publishers should know that the Act of Parliament concerning copyright has been lately registered in Jersey and Guernsey, and that any works published in England or elsewhere, cannot now be pirated here with impunity as in former days. Books printed in the Islands can be sent to England by paying 3d. per lb. duty, at the Custom-House of the port at which they are landed. By the 4 and 5 Will. 4, sec. 89, Books in the foreign living languages, being of editions printed in or since the year 1801, bound or unbound, pay a duty £2 10s. the cwt. The 41 Geo. 3, confirmed by the 54 Geo. 3, imposes a penalty of 3d. per sheet, half to the King and half to the informer, on all persons who shall *import from abroad* or reprint at home, without the consent of the proprietor, any work of which the copyright is unexpired. But the penalty of 3d pence per sheet is not recoverable unless the book has been previously entered in the register book of the Stationer's Company. By the 54 Geo. 3, c. 156, eleven printed copies of every book complete, are to be delivered on demand, within twelve months after publication, for the use of the public libraries, viz. British Museum, Sion College, Bodleian Library at Oxford, Public Library at Cambridge, Faculty of Advocates at Edinburgh, four Universities of Scotland and Trinity College and King's Inn Libraries at Dublin. By s. 5, books demandable are to be entered at Stationer's Hall within one month, if published within the bills of Mortality, or within three months if published elsewhere. English visitors to the Islands should be cautious in carrying to England, the works of English Authors printed in France. If an author print and publish *abroad*, and does not use diligence to be the first printer and publisher in England also, any third person procuring the work, may lawfully print and publish it in England.—[Bar and Cress 870.]

Creditors, ranking of.—In attachments of personal property the first creditor attaching is preferred, unless a *désastre* is declared. Creditors acquire a preference by the *arrest* or *saisie* in execution, and not by the date of the debt, or even of the judgment. This is the case in the city of London with respect to money in the hands of a garnishee.

Crimes committed out of the Realm triable in England.—

There are several statutes of Parliament by which the particular crimes of treason, murder and manslaughter committed out of the realm by any persons are made triable within the realm of England—See Hen. 8, c. 15 ; 33 Hen. 8, c. 28 ; 35 Hen. 8, c. 2 ; 10 and 12 Wm. 3, c. 7 ; 11 Geo. 1, c. 29, s. 7 ; 39 Geo. 3, c. 37 ; 43 Geo. 3, c. 118, s. 6. And see two opinions that 28 Hen. 8, c. 15, extends to colonies established before the Act has passed, 1 Chal. op. 199 and 4 Chal. op. 220, but see also 2 Chal. op. 202, 203.

Crimes committed on the High Seas.—The 1 Geo. 4, c. 91, s. 1, provides that the Crimes and Offences mentioned in 43 Geo. 3, c. 58, committed on the high seas, out of the body of any county, shall be liable to the same punishment as if committed on land in England or Ireland, and shall be inquired of &c. as treason &c. are by 28 Hen. 8.

Criminal Law.—Strictly speaking there is no criminal code, so that the Court, after conviction of offenders, is mostly guided by precedents, or by its own discretion derived from the analogy about what the law would do in other countries in inflicting punishment. To facilitate the finding of those precedents, which were formerly registered promiscuously with the civil proceedings of the Court of Cate, the judgments in all criminal cases have since the beginning of this century, been entered in a separate book.—[Durell.]

Criminals, escape of.—In the case of Vautier, Carter and Cooper, 1833, charged with having broken into the house of Mr. Le Boutillier, in the parish of Trinity, and stolen therefrom certain money and other valuable effects, who having effected their escape to England, were afterwards apprehended at Gosport, on suspicion of having stolen property on their persons, were transmitted to Jersey in custody of a Constable, and tried and convicted : thus Justice soon overtook the criminals. Now let us contrast with this the way things are managed in the Channel Islands, where criminals who escape from one Island to another, if apprehended, cannot be removed back again, or be convicted there. In the case of Wren and others, charged with robbery, who broke from the Jersey prison in 1836, and were pursued by the gaoler and apprehended in Guernsey, the Court of that Island held that they were not competent to take cognizance of the matter as it originated out of their bailiwick, and consequently discharged the prisoners ! Again : in the case of Matthews and Prowden, charged with the commission of various robberies in the island of Guernsey, and who escaped to Jersey, where they

were apprehended, the Court of this island held also, that inasmuch as the crimes were alleged to have been committed out of their bailiwick, they had no jurisdiction in the case, and therefore liberated the prisoners ! Again : in the *Crown v. Beauchamp*, 1837, defendant was sued for the penalty of £100, as one of the crew of the schooner *Spartan*, which sailed from Jersey and was seized at Penzance, for having on board contraband tobacco. The prosecution was founded on 3 & 4 Wm. 4, c. 53, s. 48, intituled, an act for the prevention of smuggling, which extended to the island, and had been registered on the public records. It appeared that Beauchamp had escaped from Penzance, and fled for shelter under the privileges of this exempt jurisdiction. On the objection of defendant, the Court held that inasmuch as the facts alleged originated out of the bailiwick, they could not take cognizance of the matter, and discharged him from the action. On an appeal to the full Court, the judgment was affirmed ! By this it may be seen that criminals escaping from other countries, are sure to find protection if they take refuge in either one of the islands of Jersey and Guernsey.

Crown Officers, recommending of.—The manner of recommending these Officers has been modified. It was formerly literally understood, as was probably the original intent of the Patent, that the Governor should not interfere in recommending to those appointments. (See Art. Governor.) That continued to be the case till 1802, when the Royal Court recommended one person, and the Lieut.-Governor, Lieut.-General Andrew Gordon, recommended another to the vacant place of King's Procurator. Thos. Le Breton, Esq., the nominee of the Lieutenant Governor was appointed, when the Court refused to swear him in, on the ground that it was an incroachment on their privileges. This led to some spirited Representations on both sides, till at last the Gordian Knot was cut by an Order of Council, directing the Jurats to swear in Mr. Le Breton, under pain of incurring the Royal displeasure, and that the Lieut. Governor among others had a right to recommend. The liberal meaning was that he might do it as any other private man ; but it was in fact granting the power to the Lieutenant Governor, and taking it from the Royal Court, who, could that body divest itself of intrigue and party feeling are the best judges of the fitness for such an Office.—[Durell.]

Crown Officers, their right to be present at the States.—On the petition of the Procurator General, Advocate General and Deputy Viscount, setting forth that by a resolution of the 4th

October 1823, the States decided that the Crown Officers had no right to speak in the assembly on any question but those which concerned his Majesty's interest or when required by the States ; his Majesty referred the said petition to the Lords of the Committee, who reported that the right claimed by the Crown Officers was founded on a custom sufficiently established by usage ; wherefore the following order of the 19th March 1824, was issued : " His Majesty having taken the said representation into consideration was pleased by and with the advice of his Privy Council, to approve thereof, and his Majesty doth hereby order and direct, that no interruption be given to the *Procureur*, *Vicomte*, and *Avocat du Roi*, in the exercise of their right to be present in the Assembly of the States of Jersey, nor to the *Procureur* and *Avocate du Roi* in the exercise of their right to speak in the Assembly upon any subject which may be brought under consideration : and his Majesty is further pleased to order, and it is hereby ordered that this order be forthwith registered in the Royal Court of the said island : whereof all persons concerned are to take notice and govern themselves accordingly. (Signed)

C. Greville."

Crown, matters concerning the.—The Governor or his Deputy shall be present when there shall be any sentences given in the matters which concern His Majesty, either in interest or prerogative ; and the officers of His Majesty shall be able to intervene by appeal in cases where His Majesty shall be interested.—*Code*, 1771.

Curator.—Should any person make a bad use of his property, the heirs at law may on applying to the Court, and shewing sufficient cause, have a curator or guardian for bad conduct appointed over him ; in which case the proprietor loses all power over his effects : and is considered in this and some other respects as a man in England would be, against whom a statute of lunacy should be issued. The mode of proceeding is to lodge a complaint with the Constable. On an information given by the Constable, that a person residing in his parish is incompetent to manage his affairs, the Attorney General moves the Court, that six of the principal inhabitants who may be acquainted with the party shall be convened before Justice to report their opinion on oath, as to his or her state of mind ; when, if it shall appear, that the party is *non compos mentis*, the officer moves the Court for leave to summon seven of the nearest relations to elect him a guardian, called a curator, who on being approved by the Court is sworn into office for a year and a day. Curators may be appointed over

in the Island or out of it, and without oath being previously made that the said debt is justly due, and without security being given to prosecute the suit, though the Plaintiff should also be expatriable; [Hitchcock v. Mc Gregor] persons not expatriable are liable to arrest on bills or promissory notes payable to order, but not on bonds [Queree v. Aubin, 1838]: the Sheriff can take either body or goods, but cannot take both unless he first seizes the goods, and finds them to be insufficient to satisfy debt and costs. Money, i.e. *coin* of the realm, found in the house or lodged in a bank and also debts in the hands of a third party, can be arrested, but not money carried about the person; nor the working tools of an artificer unless it be for Rent. [Benest v. Toll, 1838.] The law requires that before an arrest shall be levied, the Sheriff shall present an account to the debtor setting forth the particulars of the demand. Arrests, for security of payment, of bills of exchange and promissory notes, *not* due, are made on the person, and arrests for security of rent, *accruing* due, are made on effects. If the debt be contracted out of the Bailiwick, and no acknowledgment be given within it, or an engagement to pay it here, it has been questioned if the Court is competent to entertain an action for its recovery, but if it be founded on a bill of exchange, or any negociable instrument, or even on a bond, or on the record of a judgment given in England, or elsewhere, either for debt or damage, the Court always maintains its competency thereon: the creditor in such case may follow the debtor to sue him, or send a power of Attorney, giving authority to some person to act on his behalf, but the power must be enrolled in the Court, to give it validity; or he may get an administrator appointed to represent him, which is the cheaper mode. Evidence of the debt by the personal attendance of witnesses, or acknowledgment in writing, properly authenticated, is necessary. Persons when arrested are, in default of bail, either of a person of known landed property in the Island, or a deposit of the money, committed to prison. The debtor is usually brought up by the next Court day, (generally on Saturday) when the case is heard and the arrest is either liberated, or confirmed with costs, but if the debt be denied the matter is sent to proof, and in the mean time the debtor is remanded to prison. It is *said* that if a creditor releases his debtor from gaol he can cause him to be arrested again for the same debt both before and after judgment, adding the costs of the previous caption and the prison expences thereto, and that he can do this again and again until the debt be extinguished by payment, or the debtor be discharged from custody by an Act of the Court.

Debt, arrest for, when and by whom it cannot be executed.

—Arrests made after sunset, have been adjudged illegal : in the case of Gallichan and Machon v. Lamb, (1834) defendant was arrested between the hours of nine and ten o'clock at night, on an order of Justice, on which the Court gave the following decision : “ It appearing that the arrest of the person of Defendant has been made after sunset the Court by the balance of the chief magistrate, has judged that it is illegal, therefore the said arrest remains liberated.” It has been questioned whether the execution of a Writ by the *Deputy Viscount*, who is not named therein, is legal, but there is no decision on the point. It has been adjudged, however, that an arrest made by the *Constable* is illegal, when the party has not previously applied to the Sheriff. In the case of Gray v. Poyntz (1836) the Court held that, an arrest made by the Constable of St. Helier on the person of defendant, in virtue of an *Ordre de Justice*, was illegal, inasmuch as Mr. Gray had not applied to the Sheriff or Denunciators to arrest him ; and it appearing afterwards that defendant had been subsequently arrested by Denunciator Aubin, whilst in prison, on the arrest made by the Constable, and after the Court had declared it to be illegal also, it being effected in consequence of that made by the Constable, wherefore they liberated it accordingly.

Debt, arrest for in Guernsey.—By an Order in Council dated 13th May, 1823, which regulates the Law of Arrests, Bail, Costs, &c., no arrest of the person is permitted for any sum under £5 sterling ; and only in cases *founded on affidavits*, taken before the Bailiff, or before any one of the jurats of the Royal Court, after a person has lived in that Island *a year and a day*. In the case of De Jersey v. Mc Lean, the Guernsey Court decided that all persons, whether *fondés en héritage* or not, are equally liable for debts due on Promissory notes, Bills of Exchange, or other negociable securities, twenty-fours hours after arrival in that Island. “ By the constitution of the Island, the Court has no cognizance or jurisdiction over debts or other cases that have been contracted out of the Bailiwick, or that have originated elsewhere, and in former times, even so late as in the memory of some of the Court, the exemption from arrest of a stranger, for a debt contracted in England or other places abroad, was absolute, not only for a year and a day, but so long as the stranger remained in the Island. It is only of late years that the Court has modified this general exemption, and judged that after a *continued* residence of a year and a day, the stranger

has chosen this (Island of Guernsey) for his domicile, and should answer to the demands made on him, giving him at the same time the option to plead in the Court, or give bail to plead in the place or country where the debt was contracted." —*Jacobs' Hist. of Guernsey*. In the case of *Starkey v. Miller*, (1834) before the Royal Court of Guernsey, Plaintiff actioned Defendant to show cause why an arrest of his person by Miller for £28 for board and lodging at the Royal Yacht Club Hotel, Jersey, should not be annulled. It was demanded for the Plaintiff that the arrest should be set aside on the ground that Mr. Starkey was a stranger in the Island, and not having resided there a year and a day, could not be liable to personal arrest for any simple book debts contracted out of that jurisdiction. It was alleged that the Court had repeatedly consecrated that principle in actions of the kind brought before it, and as a proof of its being the law of Guernsey, the Court's answer to one of the questions put by the Royal Commissioners in 1815 was read. "In what cases," enquired the Commissioners "if any, is the person of a stranger privileged from arrest?" To which the Court's answer was "In all cases of simple contract debts, contracted out of this jurisdiction; but by late decisions, this privilege ceases if he have acquired a settlement of a year and a day." Another extract was read from the Court's observation to the Lords of Council, dated 28th Nov, 1817 to the following effect. "The Royal Commissioners say that 'this exemption seems rather to have crept into use of late years than to be warranted by the ancient law, but they have been strangely misinformed. It is not the *exemption* from arrest that has crept into use, but the *liability* to arrest now allowed after a year and a day." The Court decided that the Law was clearly in favor of the Plaintiff, the arrest was therefore set aside on the ground that Mr. Starkey had not resided in the Island a year and a day. Again:—in the case of *Valpy v. Heaton* before the Guernsey Court, April 27, 1837, the Plaintiff sued Defendant for £8 3s. 9d. amount of account delivered for groceries sold in Jersey. The Solicitor-General stated that he was of opinion the plaintiff's action was irregular, and that the arrest should be set aside, the goods having been purchased in Jersey, and Mr. Heaton not having been in Guernsey a year and a day, his person was not liable to arrest. Advocate Falla stated that this case was an exception to the general rule, as he would prove that the plaintiff had left Jersey not to return, the whole of his furniture having been arrested for the benefit of his creditors. That he had written to Mr. Valpy since his arrival in Guernsey, a letter without place or

date, informing him that he had left in Jersey property more than sufficient to pay all his creditors, and that it was his fault if he was not paid by taking a part in the general scramble which was made of his property.—The Bailiff after consulting the Jurats, stated that it was the unanimous opinion of the Court, that the person of Mr. Heaton was not liable to arrest, and sentenced the plaintiff to pay the costs. Again :—in the case of *Le Bas v. Waterman*, 1837, the Guernsey Court decided that the effects of a person residing in Jersey, were not liable to arrest for a debt contracted in that island. Thus it may be now considered as a settled principle, that neither the person nor the effects of a stranger are liable to arrest in Guernsey, for debts contracted out of the island, unless the stranger has resided there a year and a day.

Debt to the Crown.—A person employed in the service of the Crown as deputy commissary general to the forces abroad, and assistant commissary in the islands of Guernsey and Alderney, and employed in the negociation of Bank of England notes received from the paymaster general of the forces, and of bills of exchange received from the treasury on account of the public service, having also received specie on the same account is accountable to the Crown, and is as such accountant, within the statute, 13 Eliz. c. 4, s. 1, and his lands, of which he was seized at any time during the period of his accountability, are bound by his engagement with the public, and subjected to prerogative process for security and payment of the balance ultimately declared against him. [*Rex v. Rawlings*, 12 Price, 834.]

Debt, proof of, how made in England, for use abroad.—The act 5 Geo. 2, c. 7, entitled “An act for the more easy recovery of Debts in his Majesty’s Plantations and Colonies in America,” (and commonly called Beckford’s Act,) provides that “in any action or suit in any court of law or equity in any of the said plantations, relating to any debt or account wherein any person residing in Great Britain shall be a party, it shall be lawful for the *plaintiff or defendant*, and also for any witness, to be examined or made use of by affidavit, (or in case of Quakers’ affirmation,) before any mayor or chief magistrate of the city, &c., in or near which he is resident, which affidavit certified and transmitted,” (as directed by the act,) “shall be of the same force and effect in the colony as if the defendant had appeared and sworn the same matters in open court, provided that the addition and place of abode of the party swearing or affirming be stated in the oath.” And it is provided “that debts due to his Majesty may be proved

in the same manner." The provisions of this Act were extended to New South Wales, and its dependencies by the 54. G. 3, 15. which also contains a clause providing that a declaration shall be substituted for an oath not only as to the colonies named in the said two acts, but as to *any territories*, plantations, colonies, or dependencies abroad, being within any part of his Majesty's dominions." No notice is required by the act to be given to the opposite party on the occasion of making such declaration before the magistrate, but the proceeding is entirely *ex parte*; and on production in the colonial court of the declaration so made, it is allowed in proof of the debt, though such evidence may of course be encountered by *viva voce* testimony on the opposite side. It must be observed that although the act evidently extends to the Channel Islands, it has never been transmitted, nor has evidence ever been received in either island, in pursuance of it.

Declaration to be subscribed by persons within six months after they have taken office either by election or appointment, under penalty of dismission. "At the States of the island of Jersey.—The year one thousand eight hundred and thirty one, the sixteenth day of December.—The President having, on the 25th day of October last, presented to the States, an Act of Parliament, passed in the ninth year of the reign of his late Majesty, George the Fourth, intituled 'An Act for repealing so much of several Acts as impose the necessity of receiving the Sacrament of the Lord's Supper, as a qualification for certain offices and employments,' as well as an order of His Most Excellent Majesty in Council, dated the 10th of Aug., 1831, which orders that the said Act of Parliament shall be registered in the Records of the Royal Court of this Island, in order that the inhabitants may have knowledge thereof, and conform themselves accordingly.

The President having, at the same time, informed the States, that the Royal Court, by its Act of the 20th day of October last, deferred ordering the enregistering of the said Act, and ordered that it should be submitted to the States at their next sitting. The States, considering that the above Act of Parliament has for its object the recalling of certain clauses of the three Acts of Parliament—the first of which was passed in the thirteenth year of the reign of his Majesty Charles II., intituled: "An Act for the well governing and regulating of Corporations"—the second of which was passed in the twenty fifth year of the reign of his Majesty Charles II., intituled: "An Act for preventing dangers which may happen from popish recusants"—and the third of which was passed in the

sixteenth year of the reign of his Majesty George II., intituled : " An Act to indemnify persons who have omitted to qualify themselves for offices and employments within the time limited by law, and for allowing further time for that purpose, and also for amending so much of an Act made in the 25th year of the reign of King Charles II., intituled : ' An Act for preventing dangers which may happen from popish recusants,' as relates to the time for receiving the Sacrament of the Lord's Supper, now limited by the said Act ;" which clauses imposed on certain functionaries the obligation to receive the Holy Sacrament, within a limited time after their admission to their functions.

The States, considering that the said Act of Parliament cannot have force here, inasmuch as the Island is not mentioned, but wishing to second and accomplish, as much as possible, the views of Government on this subject, have resolved, with the sanction of His Most Excellent Majesty in Council, to adopt the following regulations :—

Art. 1.—Every person who exercises in this Island the function of Governor, Lieut. Governor, or Deputy Governor, of Bailiff, or of Lt. Bailiff, or Jurat Justicier, of the King's Procuror-General, of Viscount, or of Deputy-Viscount, of the King's Advocate General, of Greffier, of Denunciator, Sergeant of Justice, of Colonel of Militia, of Receiver of the Revenue of his Majesty, of Constable and Centenier in this Island, shall be bound to make and to sign before the Royal Court, the declaration comprised in the third article of this regulation, within six months following his admission to one of the above offices, which declaration shall be enregistered in the rolls of the Royal Court of this Island, if it has not been already done in England, or elsewhere, in conformity to the Act of Parliament on this subject.

Art. II.—Every functionary after having been named, appointed, or elected to fill one of the offices enumerated in the preceding article, who shall refuse or shall neglect to make and to sign before the Royal Court, the declaration inserted in article third of this regulation, within six months, from the day of his presenting himself and taking the oath required by law; on his admission to the office, shall be considered as one who has resigned, and he shall be immediately replaced by the competent authority.

Art. III.—The functionaries denominated in Art. 1st of this Regulation, shall be bound to make and to sign the following declaration, before the Royal Court, within the time and under the obligations, named in the preceding articles :—

L

"I, A. B., certify and declare, solemnly and sincerely in the presence of God, on the true faith of a Christian, that I will never exercise any power, authority, or influence that I have, or that I may have, in virtue of the office of ———, to disturb or weaken the Protestant Church, as by law established in England, or to disturb the said Church, or the Bishops, or the Clergy of the said Church, in the possession of all the rights, or privileges, to which the said Clergy have, or may have right by the law."

Art. IV.—Every person resident in this Island, who shall be named to an office in the United Kingdom, or in the Colonies, may make the said declaration before the Royal Court: and the Greffier is charged to transmit a copy of this present regulation to the Clerk in attendance of His Most Excellent Majesty's Honourable Privy Council.

Décret.—Law of *Décrets* passed by the States, 19th January, 1832, and confirmed by his Majesty in Council, March 14, 1832.

Art. 1.—No one shall be admitted to make general cession of his landed and moveable property but in one of the following cases: 1st. if he has been put upon short allowance: 2d. if he has expressed a fortnight before by an act of Court, his intention of making the said general cession, which act can be obtained both in vacation and in term, and shall be immediately posted on the door of the Court, and published in all the French local Saturday Papers.

2.—Any Creditor who shall have reduced his Debtor to short allowance, shall be enabled by addressing himself to the Court a fortnight after, both in and out of term, to cause the Viscount to be authorized to order the said Debtor to satisfy his claims within two months after such signification, under pain of the said Debtor's landed and moveable property being adjudged renounced.

3.—Any Creditor who shall have obtained an act of Prison against a person absent from the Island, having an Administrator or other person authorised, who refuses to take cognizance of the said act, shall be enabled by addressing himself to the Court, in or out of term, to cause the Viscount to be authorized to write to his debtor for a liquidation of his claims within two months after such notice, under pain of the said Debtor's landed and moveable property being adjudged renounced.

4.—The landed and moveable property of a prisoner or absentee, who shall fail to satisfy the claims of his Creditor or Creditors, or shall not put his property into the hands of Justice, during the delay granted in articles 2 and 3, shall be adjudged renounced and forthwith decreed.

5.—The Guardian or Curator against whom an act of prison shall have been obtained, who shall be unable to satisfy the just demands of the Creditors of the minor or interdicted person for whom he acts, shall be admitted to make cession of all the landed and moveable property of his said wards, on producing a paper from his electors approving such a step, and on making oath in presence of two of the said electors, that he acts from want of means to satisfy the said Creditors; and he shall previously remit to the Greffier of the Court, an exact statement of all the rights, titles, papers, and evidences concerning the said property, as well as an exact statement of the property of the minor or person interdicted, which shall be lodged *au greffe*.

6.—Should a principal heir give up his right to a succession, no *décret* shall be passed on the property of the deceased, until the co-heirs shall have been legally called upon either to refuse or accept the said succession.

7.—No person shall have the right to decree the property of a person deceased, and of the heir conjointly, except in cases where the said heir shall not have made any transaction or hereditary passation.

8.—Every person admitted to make cession before justice, shall be bound to make oath, that he acts thus, from want of means to satisfy his Creditors and shall deliver into the hands of the Greffier all rights, titles, papers, and evidences concerning his property.

9.—The person admitted to make cession shall be bound to deliver a list, under his or her signature, enumerating all the rights, titles, papers and evidences, which shall by virtue of Articles 5 and 8, be remitted to the Greffier, who shall also sign the same, and lodge it *au greffe*.

10.—Those who shall have personally made cession, and fulfilled the conditions of the present law, shall be free from all debts or obligations they may have contracted before cession. This shall hold good with respect to minors or persons interdicted.

11.—Persons making cession, who shall take away, subtract, or conceal directly or indirectly, property to the value of £10 or more, shall be liable to an imprisonment of not less than 3 months nor exceeding 2 years, and may, moreover, be condemned to pay the whole or part of the debts due by him before cession.

12.—Whoever shall assist a *Cessionaire*, either before or after cession, to subtract from his Creditors the value of £10 or more, or who shall have received or concealed effects

knowing them to have been fraudulently obtained, shall be punished by an imprisonment of 3 months at least, and not exceeding two years; and may, moreover be condemned to pay the whole or part of the debts of the said *Cessionnaire*.

13.—The Guardian or Curator admitted to make cession, on behalf of his wards, and persons whose property shall have been put into the hands of Justice, and adjudged as renounced, shall be assimilated to the *Cessionnaire* in all that respects articles 10, 11 and 12.

14.—Whoever shall have obtained permission to decree the property of a *Cessionnaire*, or a person whose property shall have been adjudged as renounced, shall be bound to appoint as Attorney, one of the Crown Officers, a member of the bar, or a scrivener of the Royal Court to conduct the said decree.

15.—The *décrets* shall no longer be treated of at the Court of Catel. The act which shall permit a *decree*, and name an Attorney to conduct the same, shall send the regulation of all the affairs belonging thereto, before the Greffier, who shall inscribe on a table affixed for this purpose in the Court, the name of the party whose property is in *decree*, as well as the name of the Attorney, where they shall remain until there is a *tenant* to the property.

16.—The Attorney shall have power to recover through the Viscount, all debts due to the *Cessionnaire*. He shall be bound to take care of the property renounced, and in default of the Lord of the manor upon which part or the whole is situated, to take possession thereof.

17.—If, in the case of a general cession, the Attorney shall judge certain goods expedient to be sold, the Viscount shall be authorized to sell the same, and shall pay the net produce thereof to the *Tenant*. He shall deliver an account of the sale to the Attorney, in order that he may be enabled to dress up a statement of the property renounced.

18.—The three weeks following, the permission to decree the property, the Attorney shall cause to be inserted in all the Saturday French Papers, a publication, requiring all those who have *insertions* to make in the decree, to deliver the same within one month from the date of the first publication, into the hands of the Greffier of the Court, in order that he may be enabled to draw up a schedule or *codement* of the insertions, conformably to article 35.

19.—The three Sundays following, the first notice inserted in the newspapers, conformably to article 18, the Attorney shall cause to be published, a copy of the said notice in all the parishes in the Island, after Divine Service, or in default of

Divine Service, at 1 o'clock in the afternoon, by the Prevot, Serjeant or Clerk, at the usual place, (Churchyard.)

20.—The Attorney shall summon within twenty days of his nomination through the Prevot, by means of a written notice left at their Houses, all persons (and in case of death, their principal heirs or representatives) who shall have passed an hereditary contract subject to insertion, with the person or persons whose property is in *décret*, or who shall have an obligation or other claim registered or inscribed in the book of obligations, to remit in the hands of the Greffier, within a month from the date of the first notice, their contract or contracts, obligations or other claims.

21.—In order that he may be able to draw up a statement of the property renounced, and ascertain the persons that he is to summon, the Attorney shall extract or cause to be extracted, from the Public Register, a statement as well of the contracts passed by the person whose property is in *décret* as of the obligations and other claims bearing mortgage on the property.

22.—All contracts passed with persons whose property is in *décret* shall be subject to insertion, excepting those undermentioned:—

- 1.—Every contract passed fifteen years at least, before the renunciation of the property in decree, excepting in the case provided for by article 44.
- 2.—Every contract of assignment of rent.
- 3.—Every contract of rectification, which does not alter in any thing, either the nature or quality of the mortgage.
- 4.—Every contract of sale of real estate to the person whose property is in decree.
- 5.—Every contract of reimbursement of rent created with option to repurchase.
- 6.—A contract of reimbursement by virtue of an act of the Court of Heritage, the person reimbursing being in all things placed in the right of the person reimbursed.
- 7.—Every contract of division of real estate between co-heirs, made in conformity to the law, and containing no alienation of property, provided it has been registered.

23.—Every contract shall bear date, in a decree, from the day it shall have been passed before justice, provided it be regularly registered, and passed ten days before the property of the *Cessionnaire* is declared in *desastre*, or before his applying to renounce.

24.—Every insertion of an act of the Royal Court shall bear date, in a decree, from the day of the obtaining of the first ac-

of the proceeding, provided it shall have been inscribed within fifteen days at furthest, in the book of obligations. If this act be not inscribed within the delay, it shall not bear date but from the day of its inscription, and if it be not inscribed 10 days before the property of the *Cessionnaire* has been declared in desastre, or of this having applied for leave to renounce, it will be considered as a debt without attachment or mortgage. The Registrar shall be bound to insert, as well in the book of the Public Register as at the bottom of the documents which shall have been delivered to him, the day on which he shall have received them, in order that the date may be regulated accordingly.

25.—In order that an act *d'envoi* (of sending parties) before the Greffier as arbitrator to regulate the accounts and other affairs between parties, bear date in a decree from the day on which it shall have been obtained, it must in addition to the formalities required by article 24, contain the amount of the sum claimed from the person whose property is in decree.

26.—A grant of Dowry shall not bear date in a decree only from the day it shall have been confirmed by justice, and the formalities required by article 24, shall have been observed.

27.—The Creditor who shall be reimbursed for an obligation or other debt registered, shall cause to be erased within the fifteen days the reimbursement, of his inscription by the Registrar, and shall pay him 2 shillings and three pence as his fees, which the creditor shall have power to require from his debtor before giving him a receipt. The Creditor who shall neglect to obtain the said erasure shall be subject to a fine of hundred livres.

28.—If in default of discovering the person, the heirs or representatives of the person who shall have passed a contract with him whose property is in decree, or who shall have an obligation or other claim inscribed in the book of obligations, the Attorney is unable to give the notice required by article 20, he shall be bound to announce it on the Saturday French Papers, specifying the date and nature of contract or act. Whoever shall have an interest in the insertion of a contract shall be able, in default of the contractor to cause it to be inserted in the decree.

29.—Three days after the expiration of the month granted to interested parties for making their insertions, the Greffier shall remit the register of insertions to the Attorney, who shall summon the *insertans* to appear before the Greffier the day he shall have named, and which must be not less than 15 days nor exceeding 3 weeks after the said remittal, in order that they may renounce to their insertions, or become tenants.

If the *inserans* whose turn it is to renounce, or become tenants, are absent or require a delay, the Greffier shall grant a delay of not less than 15 days, nor exceeding 3 weeks and shall order all the *inserans* present to appear on that day. The Attorney shall signify, by the Viscount or Officer of Justice, the day to the absentees, who shall be held to reimburse the tenant for the expense of the said signification. The Attorney shall then remit into the hands of the Greffier the records of the publications of the decree and the summons and advertisements, as well of the persons who shall not have inserted as of the absentees. If all those who have remitted their insertions to the Greffier are present and willing to proceed, the Greffier shall call the *inserans* according to the schedule which he shall have drawn up in virtue of article 35. Whoever shall refuse to declare himself tenant to the property of the person making cession shall lose the benefit of his insertion.

30.—The Attorney shall draw up during the month of permission to decree, a statement of the property renounced, in order that all persons interested may have recourse thereto. He shall be responsible for every neglect he shall commit in conducting the said decree.

31.—Whoever shall have omitted to insert a contract, account or other document in a decree within the time prescribed by article 18, shall be enabled to cause it to be inserted, provided the *inserans* have not yet been called in conformity to article 29 before the Greffier; he shall pay to the Greffier for the said insertion or insertions the sum of six shillings and four pence per insertion. The Greffier shall on his demand inform him of the day and hour on which the *inserans* are to appear before him.

32.—Those who shall have *privileged* debts not subject to insertion on the property in decree, shall, to preserve their privilege, remit to the Greffier, within the delay granted to make the insertions a declaration or protest of the privileged debt, announcing the amount, of which mention shall be made in the register of insertions.

33.—A Tenant to a decree shall not be held to pay more than three years' arrears of rents or dowries, nor more than three years interest on obligations, or other debts bearing interest, before renunciation, notwithstanding any prosecutions made to that effect. The guaranties in case of a decree, shall not be held to pay more than 3 years' arrears of *rentes* or dowries and 3 years interest on obligations or other debts before renunciation.

34.—A Tenant upon an insertion bearing a date prior to an act by which the *Cessionaire* had made himself tenant to pro-

perty, shall have the option to claim that the said act be renounced, and then the Attorney who shall have conducted the first decree, or in default of him, the Attorney who shall have conducted the decree in which the said act shall have been renounced, shall cause to be assigned before the Greffier, within fifteen days or three weeks after the said option shall have been signified, the *inserans* whose insertions had remained good, in order that, according to their date and rank, they renounce to their insertions, or make themselves tenant to the said property.

35.—The Greffier shall follow the ancient usage in the drawing up of the schedule of insertions ; that is to say, that the debts without attachment or mortgage shall be the first, and then the contracts, accounts or other debts according to the date they are to bear in the decree, the new dates preceding always the older dates, and without establishing any difference between the insertions of the same date.

36.—The day fixed for the definitive evocation of the schedule in order that a tenant may declare himself to the property renounced, the Greffier shall call the *inserans* according to the schedule drawn up in conformity to article 35. Whoever shall refuse to declare himself tenant to the said property, or, who when it comes to his turn, shall not answer either personally or by the means of a *Procureur* duly empowered, on being called by the Greffier, shall lose the benefit of his insertion.

37.—An *inserant* having a guarantee, bail, associate, or partner, shall in order to preserve his right of recovery, cause the same to be assigned to appear before the Greffier the days prescribed in article 29, and the presence or absence of the guarantee, bail, associate or partner shall be established by the record of the Greffier.

38.—If the *inserant*, having a guarantee or bail, renounces to his insertion and attaches himself to his guarantee or bail, the guarantee or bail shall have a right to take his place and to declare himself tenant to the property renounced.

39.—If, during the conducting of the decree, one or more creditors offer to become tenants to the property, paying the debts and mortgages due by the *Cessionnaire* and the expenses already incurred they shall be admitted thereto.

40.—When an *inserant* or other having cause, shall declare himself tenant, the Greffier shall make a record of *tenure*, announcing the date which the insertion bears in the decree, and declaring all contracts and mortgages bearing a subsequent date and subject to insertion, as renounced and of no effect or value, and subjecting the *inserant* who shall have made himself

tenant, to the payment of all debts and mortgages of prior date, which shall not have been renounced for want of insertion.

41.—The Attorney shall without delay cause to be summoned to appear at the Saturday's Court, either in term or vacation, the Tenant, to see the confirmation of the record of *tenure*; and the Court by its act shall then adjudge to the Tenant the property both real and personal, of the tenure, and shall authorize the Viscount, or one of the officers of Justice, to put the said tenant in possession thereof, which act the said Attorney shall cause to be registered in the book of contracts of the Public Register.

42.—The contracts and other documents renounced, shall not be transcribed in the register of the decree, which shall only contain the copy of the records of the Greffier of the insertions remaining good, the protests made to the said decree, as also the copy of the schedule and the records of options made by the Tenant.

43.—A Tenant to the decree, who shall not have taken possession of the property contained in a contract renounced in the said decree, shall be able to make it revive, by signifying in a month from the date of the act of *tenure*, his wish to that effect, by the Viscount or Officer of Justice, to the person or persons who shall have renounced the said contract. If the Tenant to the decree cannot discover the person or persons to whom the claim must be made, he shall signify the claim to the Greffier, who, on the record of the Viscount or Officer of Justice, shall inscribe at the bottom of the schedule, all options which shall have been made, whether it be to revive the contracts renounced, or to renounce to a *tenure*.

44.—If a decret is void, without a tenant, the Attorney shall cause to be assigned the persons who shall have passed contracts with the person whose property is in decree, from fifteen to thirty years before the renunciation, or who shall have obligations or mortgages bearing a date from fifteen to thirty years before the said renunciation, to appear before the Greffier, so that a tenant may declare himself on schedule, drawn up in conformity to article 35. If this period be not sufficient, the Attorney shall cause to be summoned to appear all those who shall have passed contracts, or shall have obligations or mortgages, whatever may be their dates. In case that all those who have passed contracts with the person whose property is in decree, or have obligations or mortgages on his property, should renounce to their right of insertions, the Attorney shall address himself to the Court, that he may be permitted to go back to decree the property that may be necessary.

45.—Whoever being prisoner for debt, or having placed his property into the hands of Justice, shall deteriorate or cause to be deteriorated any part of his property, shall be punished by an imprisonment of not less than three months, or more than two years. Whoever shall assist him in the said deteriorations shall be punished by an imprisonment of three months at least, and of two years at most; and shall in addition be compelled to repair the damage caused.

46.—Whoever, being on the eve of losing his property in a decree, shall deteriorate, or cause to be deteriorated, any part of his said property, shall be punished by an imprisonment of not less than three months, and not more than two years, and moreover be compelled to repair the damage caused. Whoever shall assist him in making the said deterioration, shall be liable to the same penalties.

47.—No one shall be able to create on his property, *rentes* on condition of repurchasing them, under pain of nullity of the said condition.

48.—The fines mentioned in this law, shall be for the benefit of his Majesty.

Deeds, registration of.—Deeds and hypothecations are subject to registration, under pain of being considered private, and of having no effect over others posterior in date. Such deeds to have no effect whatever if not registered within six months of their date.—*Code, 1771.* A Bond is considered a sort of hypothecation of the real and personal property of the obligor, and binds the heir whether he is named or not.—[*Falle.*]

Default après contestation.—In the case of Attorney General *v. Whitfield*, 1838, defendant interjected a remonstrance against the proceedings of the Court which affected him during his absence, when the full bench decided, that a judgment given on a *default après contestation* was final.

Delinquencies in Military Duties—The regular forces are tried by Court Martial; those in the Militia by the Royal Court, which in fact is a Military tribunal, inasmuch as nearly all the Jurats hold Commissions in the Militia.

Denizens.—A Denizen is an alien born, but who has obtained *ex dona tione regis*, letters patent to make him an *english* subject, an high and incommunicable branch of the royal prerogative. A Denizen is a kind of middle state, between an alien and a natural born subject, and partakes of both of them, [1 Bl. Com. 374, &c.] He may take lands by purchase or devise, which an alien may not, but cannot take by inheritance. A Denizen may therefore be a lessor or lessee, for the chief

incapacity which he retains regards the defect of inheritable blood, so that in other respects his situation may, in a great degree, be assimilated to that of a bastard. He cannot however in England take any grant of lands, &c., from the crown ; nor sit in a Council, or in either house of Parliament. [Stat. 12. W. 3. c. 2.] See *Aliens and Naturalization*.

Denunciator.—Originally the Viscount was able without assistance to perform the duties imposed upon him by the Court ; but the business having increased, certain officers, called Denunciators, have since been appointed by the Bailiff, as the head of the Royal Court, to assist the Viscount in serving and executing the processes and orders. Previously to the year 1645, one of these officers had been found sufficient ; in that year the Bailiff appointed a second Denunciator to assist the Viscount. Mr. Le Geyt, the celebrated Lieutenant-Bailiff and learned commentator on the laws of Jersey, makes the following statement respecting the origin of the appointment of a second Denunciator. "The Viscount," he states, "has been since nearly fifty years assisted by two Denunciators, whereas before that period there was only one, Mr. Hamptoune,* of whom I have spoken above, having about the year 1645 several places during the civil wars besides the functions of his office, and there being but one Denunciator, who was rather infirm, it was deemed expedient to add a second Denunciator, and Sir George De Carteret, then Lieutenant Governor and Bailiff, wished to gratify with that new appointment an inhabitant named John Le Conteur, who had rendered him some services. There are therefore at present two Denunciators." Since the year 1645, two Denunciators have continued always to be employed, and the Bailiff for the time being has, whenever a vacancy occurred, appointed some person of his own nomination to fill the office. When upon any occasion it occurs that either of the Denunciators is, from necessary absence or illness, unable for a time to attend to the duties of his office, it has been the custom for the Bailiff to appoint some person to act for him during the time he was unable to perform those duties. This interim officer is called a stipulant Denunciator. The custom of appointing stipulant Denunciators in the above-mentioned cases, appears to have prevailed from a period long anterior to the appointment of a second Denunciator.

Depositions, taking of.—Attornies of the Court are bound to attend at all criminal cases to take the depositions of witnesses

* Mr. Hamptoune was the Viscount.

in writing, for which they receive no reward or consideration, and which duty the Viscount and Denunciators are exempted from on account of their official appointments. They are summoned by the Senior *Ecrivain*, who is exempted for that service and in default of their attendance three successive times, they are deprived of the right of passing contracts for a fortnight.

Deputy of the States is usually a member appointed to represent that body before Council. It has been the custom for each Deputy at the first sitting of their assembly, held after his return to the Island, to make a report of the result of his mission, and then his deputation is at an end. [Answer of the States to the Petition of F. Godfray, Esq. before the Privy Council, in 1834.]

Deputy Viscount.—The Viscount of the Island is intrusted with the service and execution of the processes, writs and orders of the Royal Court. He is appointed by letters patent from the Crown, but performs his duties by a Deputy, who is called the Deputy Viscount. The following is a translation of his oath of office:—You swear and promise by the faith and oath that you owe to God, that well and faithfully you will execute the place and office of Viscount in the Court of the Queen's in this Island of Jersey : you shall keep and cause to be kept the peace of the Queen as much as shall be in you possible ; you shall according to your duty put or cause to be put in execution the sentences, ordinances and acts of the Jurats which they shall commit to you : you shall also make all good and faithful summonses and records of your daily duties, you shall show yourself faithful and diligent in the execution of the ordinances made by the Governor, Lieutenant Governor or Deputy Governor ; and of the Bailiff, Lieutenant Bailiff and Jurats ; and attend and assist at the Court at all times and when you shall be thereunto required, and in causes you shall stipulate for the parties absent, taking care to preserve the right as much as shall be in you, governing yourself by the good advice of the Bailiff, Lieutenant Bailiff and Messieurs the Jurats : and you shall execute all other duties which concern the said office according as they have been used and practised by former Viscounts, which you promise upon your conscience.

Deputy Viscount, his responsibility.—There is a distinction between a deputation and an assignment : a deputy is the mere servant of a party appointed, and for whose acts the principal is liable ; such a person need not be appointed by deed, but a person assigned to an office must be. In Viner's Abridgement, title " Officer," 1. 3, it is laid down, that a deputation

might be without deed, for the deputy acts only as the servant and in the right of his master. Hence it is more than questionable, if the Deputy is amenable to the *Jersey* Court for his conduct; he, himself, has publicly declared that he is not, and this view appears to coincide with the principle laid down in the Queen's Bench, in the case of *Newland v. Duke of Beaufort*, when the learned Counsels, Campbell and Creswell, contended "that the Crown had no prerogative to empower a subject to appoint a Deputy who should be responsible to the public for the due discharge of the duties of his office." The Court took time to consider the point, and afterwards affirmed it. If the Deputy cannot be made amenable to the *Jersey* Court, it is quite clear that the Viscount cannot, inasmuch as he lives in England, out of this jurisdiction, consequently the only remedy for personal wrongs, arising from the Deputy's conduct, is for the injured party to sue the Viscount in the Court of Queen's Bench for damages.

Désastre, declaration of.—This is a declaration of insolvency, usually made by one creditor, when he has doubts of his own security, to prevent another from acquiring a preference over his debtor's estate, and thus to enable all who shall attach the property within the period allowed for that purpose, to share in the proceeds. For example: suppose a creditor is about to obtain judgment against his debtor, and thus to acquire a preference for the amount of his claim; another creditor, if he shall think there will not be sufficient to satisfy him also, or even the debtor himself if he considers himself insolvent, may declare the estate *en désastre*; [see *Insolvency*,] on which the Court makes a record of the same, and adjourns for a certain number of days (generally 14 or 21) the passing of all causes against the debtor, so as to enable claimants to levy attachments, thenceforth. On passing the said causes, judgment is always suffered to go by default, the claims are not proved, and whatever might be their nature, they are admitted, and all stand on the like footing: no provision however is made to protect the rights of absentees not represented. The property is then sequestrated for the benefit of the attaching creditors, and if moveable, is sold before the officer of Justice, and the proceeds divided amongst them, deducting his perquisites, and the other law expenses, besides a commission of five per cent., not on the net, but on the gross amount. If any part be landed property, then the *whole*, both real and personal is adjudicated by a decree of the Court to that creditor who shall have the right to declare himself *Tenant* to the same.

Descent—Descent or Inheritance is somewhat intricate in Jersey. The custom of Gavelkind exists here, but though it possesses equalization in principle, it operates very unequally in practice. By the Code of 1771, the eldest child, whether male or female has (though it has been doubted whether the female has this preference only when there is no male child) in direct succession, is to have the house with its appurtenances, together with thirty perches of ground for a kitchen garden; and should there not be above four *vergees* more, the said eldest to have the choice of four vergees, and afterwards of the tenth vergee of what may remain. He has also other privileges, in order to enable him to pay the rents due on the Estate—after these have been arranged, the remainder of the property, whether consisting of houses, lands, or rents, to be divided between the said eldest and the other inheritors *according to the ancient custom and practices of the Island*; viz. two thirds among the males, including the eldest, who now stands with the younger sons; and only one third between all the daughters howsoever numerous. Nor must the portion of any daughter exceed that of the younger son; so that if in a family of ten children there should be five or six daughters, the respective portion of each daughter, would probably be a mere trifle. The inheritors or their representatives cannot raise any pretension to a division if there be no claim within forty years. The value of the lands to be divided, is made by six appraisers elected at a Parish Meeting.

Devise—In the Code of 1771 no mention is made of the portion due to widows. Though a man during his life may alienate any part of his fortune, whether real or personal, yet his widow, who in all legal documents retains her maiden name and even her appellation of *Demoiselle* &c. has a life interest in one third part of all landed estates or rents, of which her husband was possessed on the day of marriage, or which he afterwards became possessed by inheritance in direct succession. The other two thirds of which he may have been possessed, fall to his heirs at law, and this disposition he cannot in any respect alter. With regard to personal property, a man may if he please, devise one third to whom he will; his widow will have a right to another third; and the heirs at law to the remaining third. The personal Estate thus divided, becomes the absolute property of the parties, to whom the portions fall.

Disallowed.—It is understood that in all cases when her Majesty's confirmation shall be necessary to give validity and affect to any Act passed by the States, unless her Majesty's confirmation thereof shall be obtained within three years,

from the passing of such act, such act is considered as disallowed.

Disqualified Electors are minors, women, those under curators, and persons convicted of perjury.

Dissent.—This is a kind of *veto* put by the Bailiff against a resolution or Act of the States, when passed through any informality or contrary to the provisions of the constitution. It stops all their proceedings, but on placing his *veto* he is required to send his reasons for the same in writing to the Council Office. [See *Provisional Laws*.]

Disturbors of the peace cannot be seized by officers of the police without the Constable's authority. The Crown officers, Viscount and Denunciators can seize delinquents at all times though they scarcely ever do it.

Divorce.—Neither the States nor the Court of Jersey are competent to dissolve a marriage under any circumstances whatever; but the Court can separate husband and wife as to their property, *quant or biens*, if both are willing; and upon the petition of either party in cases of incontinency and adultery, the Ecclesiastical Court can separate them *a Thoro et Mensa*, as to bed and board. After separation *quant aux biens* the civil law no longer views them as 'one flesh,' but as two distinct parties, each having separate rights and interests independent of the other, and also to third parties; inasmuch that either one could maintain an action at law against the other. Thenceforth both husband and wife can carry on trade or merchandize separately, or jointly as co-partners: in which case the wife as well as the husband becomes personally liable to all the operations of the law of debtor and creditor: the husband can sell to the wife, and the wife to the husband property, even to the prejudice of their own heirs, and of the claimants on their separate estates; which is often done, and is in fact, the principal use or rather abuse made of this custom: but if the wife to whom the property was transferred should die leaving her husband her survivor, the property would go to her heirs and the husband be deprived of the enjoyment of it during his life, which he would otherwise be entitled to, so long as he remained her widower. It has been held that after a separation *quant aux biens* the husband not only loses all controul over his wife's personal estate, during coverture, and the enjoyment of her real property, if he survives her, but that the wife loses all *legal* claim on her husband for maintenance if she subsequently becomes distressed, but we have not found any precedent in which the latter point has been decided.

The usual course in this island when a husband wishes to rid himself of the maintenance of his wife is to remove himself out of the jurisdiction, and to take up his domicile in France, where there is no redress for civil wrongs sustained by *British* subjects, inasmuch as the laws of that state contemplate the protection and relief of only *French* citizens. We believe that in none of the colonies or British possessions, is there a jurisdiction competent to pronounce a sentence of divorce, and the Governors usually have a positive instruction to withhold their assent to any act of the local legislature dissolving a marriage. Even in England, the Courts can only pronounce *for* a divorce, as the Marriage Bond must be dissolved by Act of Parliament; because a divorce is effected not by separating man and wife, but by *altering the law* so far as regards the parties concerned. A divorce may however be obtained in the courts of most foreign countries, if *both parties become domiciled, where the remedy is sought*, so as to give them jurisdiction: but it is a well established doctrine in England, that no sentence of Divorce of any foreign country or state can dissolve an english marriage, a vinculo for grounds on which it was not liable to be dissolved a vinculo in England. [Rex. v. Lolley. 1 Russ. C. and M. 190; R. & R.C.C. 237.] The only proper course for parties wishing to be divorced is to obtain an Act of Parliament. It is true they may be divorced in *Scotland*, but then it will be necessary for them to remain within the Jurisdiction to derive any advantage from it, for a Scotch divorce does not dissolve the Marriage Bond according to the law of England if entered into there; consequently immediately the parties come within the Jurisdiction of the English Courts, they stand in precisely the same position as if no divorce had taken place.

Dogs.—It shall not be permitted to any others than those who have a right to sport, to keep more than one dog for the defence of their houses and lands, and which dog shall not be a sporting dog. Dogs which shall be known upon the information of a person of credit, to have injured in any manner, any kind of Cattle or otherwise, shall be killed by the proprietors within 12 hours after the notice that shall have been made by the Constable or Centenier, or by the Vingtenier by order of the Constable, in each Vingtaine respectively, upon pain of ten livres penalty, half to the King and half to the informer, and recompense for as many Cattle as shall have been killed, wounded, or destroyed after the said notice. It is forbidden all persons without exception to take their dogs with them, when the Sporting season is not open, and at all

times to those who shall not have right upon pain of ten livres penalty.—*Code*, 1771.

Doleances being in themselves odious, because they are particularly directed against the Judge whose honour ought to be maintained because of Justice, his Majesty with the advice of his Council shall impose such fine upon the party complaining in that manner who shall fail to justify his complaint, as the circumstances may require. Three years interruption, or of discontinuance of prosecutions in matters mobiliary (moveable property) shall furnish an exception, or prescription sufficient for the case.—*Code*, 1771.

Dowry—The wife's portion of her husband's property, which he possessed at his marriage is *one third*. He can sell none of such property without her consent, and her claim holds good against his estate in bankruptcy as well as after his death. The wife has no controul in property acquired by her husband subsequent to marriage. Furniture, plate and linen are considered as belonging to the wife. A widower enjoys at his wife's death, if there have been children, her real estate until he marries again, but it then reverts to her next of kin, as it does if there has been no issue.

Dramatic productions.—The act of Parliament 3. Wm. 4, c. 15, by which the property of authors in their dramatic productions is for the first time secured to them, extends to all the colonies. The first section gives to the author the sole right of causing his piece "to be represented at any place or places of dramatic entertainment whatsoever in any part of the United Kingdom, or the Isle of Man, Guernsey and Jersey, or in any part of the British dominions," and forbids others to represent it without his authority. The second section gives him the power in case such piece shall be represented without his sanction to sue for the penalty "in any Court having jurisdiction in such cases in that part of the United Kingdom, or of the British dominions, in which the offence shall be committed."

Drawbacks are not allowed on any glass exported to the islands of Guernsey, Jersey, &c., except when the names of the said islands are respectively mentioned; nor on any plate glass, ground and polished, which shall be of less thickness than $\frac{1}{8}$ of an inch.

Duelling.—It is customary in Jersey, when the combatants are in *earnest*, for them to adjust their differences in Guernsey, and *vice versa*; because then, if one party should kill the other, neither the survivor nor the seconds if they escape back again to their domiciles can be prosecuted; seeing that the Court

of one Island has no cognizance of a crime committed in the other, nor has it the power to remove a prisoner for trial to the place where the offence was committed.

Duties and Taxes.—Whereas there was this day read at the Board, a report from the Right Honourable the Lords of the Committee of Council, for the affairs of Jersey and Guernsey, dated the 19th of this inst., in the words following, viz., “Your Majesty having been pleased to refer unto this Committee several papers from the Island of Jersey complaining of certain acts passed by the States of that Island on the 9th and 17th of Oct., 1771, and on the 14th of January, 1772, for laying the duties mentioned in the said acts upon Rum and Gin imported into the said Island—the Lords of the Committee have met several times and taken the said papers into consideration and on the 16th of March, 1773, thought proper to refer the same to Your Majesty’s Advocate and Attorney General, who have thereupon reported to this Committee that they are of opinion, the States of the Island of Jersey have no authority to pass any act or laws imposing the several duties and taxes mentioned in the said acts for laying a duty on Rum and Gin imported into the Island of Jersey, without application having been made to Your Majesty for that purpose, and Your Majesty’s consent and approbation being first had and obtained—and the Lords of the Committee having on the 15th of June, 1773, resumed the consideration of this matter agreed to postpone their determination and decision upon the legality of the said acts for three months, in order to give the said States time to be heard, thereupon, if they thought proper and recommended it to the Right Honourable the Earl of Rochford one of Your Majesty principal Secretaries of State to write to the Lieutenant Governor of the Island of Jersey, directing him to signify the said resolution of this Committee to the States of the said Island ; In consequence whereof the States of the said Island have made a return, and therewith transmitted several papers in support of their said Acts. And the Lords of the Committee having this day met and maturely weighed and considered the whole matter, and seeing no ground from what is set forth in the said return from the States of Jersey, to differ in opinion from Your Majesty’s Advocate and Attorney General respecting the legality of the said Acts imposing duties on Rum and Gin imported into the Island of Jersey, do therefore agree humbly to report to Your Majesty, that the States of the said Island have no authority to pass any Act or Law, imposing the several duties and taxes mentioned in the said Acts, for laying a duty on Rum and Gin

imported into the Island of Jersey without application having been made to Your Majesty for that purpose, and Your Majesty's consent and approbation being first had and obtained and therefore that it may be advisable for Your Majesty to declare the said acts imposing the several duties and taxes therein mentioned upon Rum and Gin imported into the Island of Jersey to be null and void in themselves, and to order the Royal Court to cause the said Acts to be erased out of the records of the said Island." His Majesty taking the said report into consideration, was pleased with the advice of His Privy Council to approve thereof, and accordingly to declare that the States of the said Island of Jersey, have no authority to pass any act or law imposing the several duties and taxes mentioned in the said acts for laying on Rum and Gin imported into the said Island, without application having been made to His Majesty for that purpose, and his Majesty's consent and approbation being first had and obtained—and His Majesty is hereby pleased to declare the said acts imposing the several duties and taxes therein mentioned upon Rum and Gin imported into the said Island of Jersey to be null and void in themselves and to Order that the Bailiff and Jurats of the Royal Court of the Island of Jersey do cause the said Acts to be erased out of the records of the said Island—and that none may pretend ignorance of His Majesty's pleasure hereby signified, the said Bailiff and Jurats are to cause this order to be forthwith registered and published in due form in the said Island. STEPH. COTRELL. [Order in Council, April 20, 1774.]

Elections for Jurat, Constable and Centenier, are usually held on a Tuesday, and the votes are taken in the towns of St. Helier, and St. Aubin, at the Market-place, and in the other parishes at the Military shed. Either the Bailiff, a Jurat, or Crown officer presides the poll on those occasions.

Elections.—The following extracts from the Law enacted by the States, 14th January, 1833, and confirmed by Council the 15th July 1835, regulates the qualification of the Electors, and the mode of contesting the returns :—

ART. VI.—Every subject of His Majesty, aged 20 years, whose name or that of his wife, not separated from him as to property, shall be inscribed on the last rate list, and who shall have neither guardian nor curateur, shall have a right to vote in all the elections for Jurats, and in those for Constable or a Centenier in his parish.

ART. VII.—Every subject of His Majesty, 20 years of age, who shall have neither guardian nor curateur, who shall become, either in his name or in the name of his wife, not

separated from him as to property, principal heir to a person whose name is inscribed on the rate list, shall have right to vote in the said elections, by virtue of his right to the succession to the deceased person's property, provided he be not already an elector.

ART. VIII.—Every candidate shall be bound, if he be required by another candidate, to declare upon oath, before the Royal Court, that he has not made use, directly or indirectly, of any bribe, promise or threat, to engage one or several electors to give him their suffrage, or to abstain giving it to one of the other candidates, and in case of refusal he shall be debarred from his candidateship, and if he has obtained the majority of suffrages a new election shall be ordered.

ART. IX.—Every person who shall have made use of bribe, promise or threat, to engage one or more electors to vote or abstain from voting in favour of a candidate in one of the said elections, shall be subject to a fine of fifty pounds sterling, and shall be deprived of the right to vote in elections, or of being elected to one of the said offices during five years.

ART. X.—Every person who shall have accepted directly or indirectly some bribe or promise to vote or abstain from voting in favour of a candidate, shall be fined twenty-five pounds sterling, and shall be deprived of the right of voting in elections during the period of five years.

ART. XI.—Every person who shall have taken a false oath administered to him by virtue of the present regulation, shall be condemned to pay a fine of fifty pounds sterling, and to an imprisonment of from six months to two years.

ART. XII.—When an election shall be contested, there shall be struck off from the number of electors all those who shall have made use of bribes, promises or threats, or accepted some bribe or promise to vote in favour of a candidate, or who shall have acted under the influence of a threat, or shall have been unduly inscribed on the parochial rate.

ART. XIII.—When the candidate who shall have obtained the majority of suffrages shall be convicted of having made use of means reprobated by the law; he shall lose the advantage of the said majority and another election shall be immediately ordered.

ART. XIV.—When the candidate who shall have obtained the majority of suffrages shall be declared ineligible, or shall forfeit the advantage of his election, and a new election shall be immediately ordered.

ART. XV.—All the abovementioned fines shall be applicable, two thirds to His Majesty, and the other third to the repair of the high roads

Electors, qualification of.—In elections for Jurats or Constables, no person shall be permitted to vote than those who contribute to the public taxes and to the maintenance of the poor, and who shall be masters of families.—*Code, 1771.*

Electors are persons chosen generally from among the nearest relations to elect a Guardian, to a minor or other person disqualified to have the administration of his person or property; also persons who elect an administrator to the property of a person absent from the island. Their oath is:—"You promise and swear by the faith and oath that you owe to God, that you will elect one of the parents, neighbours or friends, present or absent that you shall believe to be the most fit and proper person to exercise the office of Guardian to."

Embezzlement.—Persons embezzling the monies of their employers in England, or elsewhere, and who escape to Jersey or Guernsey, cannot be proceeded against criminally! If they are pursued, the only remedy their employers have is to action them for *debt*!

Entails.—As early as 1617, the States presented a petition to the Royal Commissioners Conway and Bird, who were then in Jersey, and expressed themselves as follows:—"And for so much as this island is much weakened by means of continual partitions, which is made of lands and tenements among coheirs; It may please the King's Majestie, by your good meanes, to grant liberty unto such of the inhabitants, as shall sue unto his Majestie, to entayle soe much of their lands, rents, and tenements upon their heires, to remaine impartible for the better maintainance and continuance of their houses, as the parties shall be willing, or shall be thought fitt." This request was granted in 1619, and finally settled, by an Order in Council of the 17th of June 1635, which facilitated the making of entails. "Whereas the island is much weakened by partition, the lands there decending, two parts to the sons, and one to the daughters: It was though fitt, that for the remedie of the inconveniences thereby, his Majestie's Attorney General should prepare a Commission, (as hath been formerly directed, by the ordinances made in July 1619,) unto the Governor, Bailiff, and Jurats, calling to them his Majestie's Procurator there, authorising them to give Patents under the Seale of the Bailiwicke of that Isle, to all such persons as shall desire it, to entayle soe much of their lands and rents upon their heires as to remain impartible for the better maintenance and continuance of their houses, as the parties think fitt; provided that the greatest entayle exceed not One Hundred Quarters of Wheat, Jersey measure." It is to be observed that several of the larger estates in Jersey, were

entailed according to that Order of Council. At present new entails seldom take place. About 1760 the entailed estate of Bagot and Méléches having been renounced or *bankrupted* by the owner, the creditors seized it, which was resisted by the heir, when our Royal Court, decided that the creditors should enjoy the proceeds of the estate only during the life of the Bankrupt. This was afterwards reversed by an Order of Council, which awarded the full possession of the property to the creditors. It appears then that those entails are very imperfect, since they may be barred by the bankruptcy of the actual owner.—[Durell.]

Ether imported into the United Kingdom from the islands of Guernsey, Jersey, Alderney, Serk, or Man, is to be charged with the duty equal to the amount of duty on two gallons and a half of British proof spirits—that being the estimated quantity requisite for the manufacture of one gallon of ether. —C. O. 8th May, 1830.

Evidence, how taken.—Examination, *viva voce* is resorted to only in cases of comparatively minor importance; whenever the life of a fellow creature is at stake, the examination of witnesses takes place, on written interrogatories. In criminal cases, the witnesses are examined separately at a private sitting of the Court, in the presence of the Crown Lawyers, and the prisoner's Counsel. In the Crown *v.* Bershon, Myers and Cohen, (1835) it was decided, that if Acts of the Court, be given in evidence, they must be read at full length. In criminal cases all articles to be produced in evidence must be deposited at the Greffe office.

Evidence, witnesses not bound to appear.—By the practice of the Courts of Jersey and Guernsey, witnesses are not required to enter into recognizances to appear to give evidence as in England, and consequently it often happens that they abscond from the Island before trial, through which many criminals escape conviction. In the Crown *v.* Maria Elizabeth Griffiths, indicted in 1837, for fraud, swindling, robbery and forgery, two of the principal witnesses for the prosecution having left the Island, there was not sufficient evidence to convict her, in consequence of which, she was acquitted. In the case also of the Crown *v.* John Alexandre, 1838, indicted for having committed a rape on the person of Mary Ann Ford, the two witnesses having left the Island, the prisoner was discharged!

Evidence, purity of.—It would appear by the following cases that Jurats, Advocates and Solicitors are competent witnesses, either for plaintiff or defendant, and although the

former should judge the matter, and the latter be professionally engaged. In the cause of the Crown *v.* Hue and Amy, 1837, indicted for falsifying an affidavit for the exportation of corn, Judge Le Maistre gave evidence against the prisoners, after which his competency to judge in the matter was opposed, when the Court ruled he was competent, and he resumed his seat. In *Ranwell v. Machon and Godfray*, 1838, an exception having been raised to the evidence of the Plaintiff's *Advocate* who had been summoned as a witness in support of his case, the Court overruled the objection, and received his deposition, grounding their decision on the following precedents : —*Thornton v. Godfray* in which the Solicitor General gave evidence although his colleague, the Attorney General prosecuted the case : *Brown v. Machon*, in which Mr. Messervy, plaintiff's *homme d'affairs* was heard ; and the *Burrard-street* affair, in which the Advocates, Messrs. Hammond and Godfray were heard on the one side, and Advocate Le Sueur on the other. In *Le Breton, Attorney-General v. Ennis*, 1839, the Solicitor-General Dupre, who was counsel for Plaintiff, gave evidence on the matter at issue. But here a difficulty arose as to *how* he should *cross examine himself*, when the following expedient was hit upon. The Plaintiff interrogated him and when defendant's counsel raised an objection to a question, he pleaded also for its being put !

Evidence in criminal cases, relevancy of. — "Evidence," says Blackstone, "signifies that which demonstrates, makes clear or ascertains the truth of the fact or point, in issue, either on the one side or on the other ; and *no evidence ought to be admitted to any other point.*" Conformably to this doctrine, a witness in criminal prosecutions takes the following oath : — "You promise and swear that you will declare the truth, the whole truth and nothing but the truth of *what you know in the prosecution of her Majesty's Attorney General against* , which you will do without favor, hatred or partiality, as you will answer to Almighty God, and the acquittal of your conscience." It is evident from this, that the obligation which a witness enters into, is, to declare what he may *know in the prosecution against the criminal*, yet nevertheless the Jersey Court allows questions of the most *irrelevant* and revolting nature to be put to a witness. Take for example the case of Mr. Barber, a witness for the prosecution in the *Crown v. Marin*, 1835, who on his cross examination, was asked certain questions respecting his marriage and other family matters, which had no connexion whatever with the prosecution. Witness was asked, "How many times have you been married ?"

He refused to answer, but was adjudged to do so, by an act of the Court. He said "twice." Prisoner's Counsel: "When and where?" Witness objected to answer the question, as it had nothing to do with the case. The Crown officer concluded that he was bound to answer *every* question, however irrelevant it might be to the matter at issue, as long as it did not incriminate himself, but witness still refusing to answer, the Court committed him to prison until he did answer.

Evidence abroad, in actions at law.—The Courts of Jersey and Guernsey have no power to issue a commission to take evidence abroad, (as the Courts of Westminster have,) not even from one Island to the other: nor do they admit any documentary evidence, excepting the records of a Court of competent jurisdiction, duly proved. Hence, if a person is sued for debt or damage, the ground of action for which originated out of the Island, as for instance in England, France or America, it is impossible for him to bring evidence to rebut the claim, even if the debt should have been satisfied, or to disprove the allegations for his defence. In *Ennis v. Thomas and Co.*, (1834) an appeal before the Full Court, it was judged "that the certificate passed by three sworn brokers at St. Pebersburg the 5th May, 1831, attested by a notary public produced by the defendant was not available, as an authentic document *without being proved as true.*" In *Pellier v. Jones* (1834) certificates of eminent Surgeons in London were tendered by the Plaintiff to establish the fact of a dislocation, and to show that the treatment applied to it by the Defendant was adapted to a simple contusion. The Court however decided against the reception of *written* evidence of this kind, on the ground that it was obtained *ex parte*.

Evidence, as to Colonial transactions, how procured in England.—The first section of 1 W. 4, c. 22, recites the act 13 Geo. 3, c. 63, relating to the examination of witnesses in India, and extends the provisions of that statute, so far as they relate to the examination of witnesses in actions at law, "to all colonies, islands, plantations, and places under the dominion of His Majesty in foreign parts, and to the judges of the several courts therein, and to all actions depending in His Majesty's courts of law at Westminster, in what place or county soever the cause of action may have arisen, and whether the same may have arisen within the jurisdiction of the court, to the judges whereof the writ or commission may be directed, or elsewhere," Upon the 13 Geo. 3, c. 63, the Court of Common Pleas held [*Grillard v. Hogue*, 1 Brod. and Bing 519.] that a *mandamus* might be granted to the court in

India to examine witnesses on behalf of either a plaintiff or defendant in a civil action. By s. 14, the courts at Westminster, Lancaster, and Durham, may order the examination of witnesses within their jurisdiction by an officer of the court, or may order a commission for that purpose out of their jurisdiction, and may give such directions touching the time, place, and manner of such examinations as to them shall seem fit. But by section 10 of the same act, no examination to be taken by virtue of that act shall be read in evidence at any trial without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the judge that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable, from permanent sickness, or other permanent infirmity, to attend the trial. This statute was passed expressly for the purpose of extending to all the colonies, &c. under the dominion of His Majesty, the provisions of the 13 Geo. 3, 63, s. 40, which related to India alone. [See also Geo. 3, c. 57, s. 38, part, and the 24 Geo. 3, c. 25, s. 89, therein recited.] It has however gone further than that or any other statute on the subject of prosecutions for perjury, for it has declared [sec. 7] that if any person examined under the authority of that act shall wilfully and corruptly give any false evidence, every person so offending shall be deemed guilty of perjury, and may be indicted in the county where such offence was committed, "or in the county of Middlesex, if the evidence be given out of England." [As to the methods prescribed by different statutes for obtaining evidence from India, see 13 Geo. 3, c. 63; and as to the practice in such cases and in others, (now otherwise provided for by the act 1 Wm. 4, c. 22.) see Tidd's Pract. 9th edit. 810, et seq., and the cases there cited.]

By 42 Geo. 3. c. 85, passed to facilitate the trial and punishment of persons holding public employments who had committed offences abroad, it is provided that when prosecutions are instituted by virtue of the act, it shall be lawful for the Court of King's Bench, on motion, and after sufficient notice, either on behalf of the prosecutor or defendant, to award writs of mandamus, in its discretion, to the chief justice or judge of any court of judicature in the county or island, or near to the place where the offence has been committed, or to any governor, lieutenant-governor, or other person having chief authority in that country, or to any other person residing there, as the court may think expedient, for the purpose of obtaining and receiving proofs concerning the matters charged in the indictment or information, and after pointing out the

Island. No penalties for violating the sanctity of a Fast Day can be enforced, unless provided for by Act of Parliament or Order in Council.

Fees, Ecclesiastical.—In all matters of fees and costs, the Ecclesiastical Court follows the practice of Civil Court. It is seldom or never requisite to recover them by means of Ecclesiastical censures. If however the parties should be obstinate on that head, they could not be obliged to pay more than the insignificant charges specified in the Table subjoined to the Canons.

Feudal Tenures, &c.—Feudal vassalage prevailed formerly, in an extensive and humiliating degree in *Jersey*. The present enlightened state of mankind has considerably ameliorated its effects, and, in many oppressive circumstances, annihilated the power: some remains however still exist in the island. The extent of these are now clearly defined, and they may all be commuted for specific sums of money. There are, in *Jersey*, many fiefs or manors, that have, at various times, been granted by the crown, and that are held under different tenures. The most honourable are those *en haubert*, or held by knight's service. There are now five of this description. They are those of *St. Ouen*, *Rosel*, *Samarés*, *Trinity*, and *Meleches*. We shall present our readers with a translation from the extent of Edward the third, A.D. 1331, respecting two of them, as nearly specimens of all.

“*ST. OUEEN'S PARISH.*—Reynold de Carteret holds, in the said parish, the manor of *St. Ouen*, with its appertenances, by homage, suit of court, and relief; the value of which relief, when the case occurs, is nine *livres tournois*; and for services, that he is bound to serve our lord the king, in time of war, in the said island, at the castle of *Gouree*, at his own expenses and costs, for the space of two parts of forty days, himself one of the three, with horses and armour.”

“*ST. MARTIN'S PARISH.*—William de Barentin, nephew and heir of Sir Drago de Barentin, knight, holds the manor of *Rosel*, with its appertenances, and the fief of *Rosel*, by homage; and the said fief owes sixty *sols*, one *denier*, of relief, when the case occurs. And should our lord the king come into the said island, the said William is himself bound, for the said fief, to meet our lord the king, on his horse, on his arrival, in the sea, up to the girths of his horse: and, in the same manner, to conduct him, on his departure. And while our said lord the king shall remain in the said island, the said William is to be the King's butler, on account of the said fief, and is to have the usual emoluments belonging to the king's butler;

and owes attendance at court, in the said island, at the three sessions of the court of heritage, according to the custom of the country." Specimen of one of the inferiour tenures; from the same extent.

"**ST. JOHN'S PARISH.**—Richard le Franchois, for eighteen acres of land, twelve in *Trinity* parish, and thirty in *St. Lawrence's* parish, owes for the whole, a dinner to our lord the king, at the feast of St. John; which dinner, the bailiff, the viscount, and the king's clerk, in this island, with their horses, and two servants, are accustomed to have: and if the *prevost* of the fief should pay it in money, the annual value is twelve *sols tournois*. He owes full relief; that is to say sixty *sols*, and suit of court."

Gentlemen who hold fiefs are usually called by the names of their *seigneuries*, as *Monsieur de St. Ouen, de Rosel, de Samarès, de Trinité, de Melches, &c.*

Fines, remittal of.—In the case of Abraham Piton (1830) who was sentenced to pay a fine of five shillings for omitting to go to drill, and who for a default of payment suffered 4 month's imprisonment among the criminals; the full Court on the hearing of his remonstrance, claiming to be liberated, decided according to the conclusions of the Crown Officers; that the demand of the remonstrant could not be granted as in such case his majesty would loose the fine to which Piton was sentenced, and that there was but the Governor (Lord Beresford) who could remit it. The remonstrance was therefore rejected, and Piton sent back to Prison.

Fixtures.—Every thing erected by a Tenant is considered a fixture if nailed to the freehold. Special agreement with the Landlord, in writing, is necessary for their removal, unless they are fixed by screws.

Forcible Entry.—Neither the Sheriff, Denunciators nor Police Officers can make a forcible entry to serve a civil process for an arrest of either person or effects, without previously obtaining by motion, an Act of the Court, for that purpose.


Foreigners are prohibited from selling goods, wares and merchandize, by retail: they are however allowed to sell by wholesale, under a licence, as may be seen by the following extract from an Order in Council, dated 28th February, 1660:—"Wee have therefore thought fit and accordingly doe hereby will and require you, to prohibit, forbid, and restrayne all forrainers and strangers (as well French as others not being his Majestie's native subjects) by themselves or by any other person or persons whatsoever, directly or indirectly, privately or publicquely, to utter or sell by retayle, any goods, wares or

merchandizes, of what nature or quality soever, within the said Island (but onely by whole sale) from a certaine time to be limited, and under such penalty as you, with the advice of the Bayliffe, Jurats, and his Majestie's Councill learned of the said Island, shall think fit ; And therefore seasonably to give publique notice to all such retaylers, that they may be left inexcusable if they shall not conforme unto this command . And that you give account to this Board of your proceedings herein, as occasion shall require. To our very good Lord the Earl of St. Albans, Governor of the Island of Jersey, or his Deputy there." The following article is taken from the *Code* of 1771 :—"Strangers and non-inhabitants, who shall bring merchandize or provisions for sale, having obtained from the Governor permission to sojourn in the island, shall be bound to obtain from the Chief Magistrate a permit, under his signature, to give notice to the public of the merchandize they purpose to sell ; by which permit the time which shall be granted them for that, shall be limited, after which they shall be punishable if they continue to keep them on sale, as infringers of the laws ; by confiscation (forfeiture) of such merchandize, and moreover by fine." In the case of Eugene Chateau, 1835, who was presented before the Court, by the Coustable of St. Helier, for having sold drapery goods by retail, in a shop which he rented for that purpose, without a permit from the Bailiff, in contravention of the law, and whose stock had been sequestered in pursuance of the same, the Court decided that the permission of the Lieutenant-Governor for him to *sojourn* in the island was sufficient, and therefore discharged the prisoner and liberated the arrest on his effects.

Foreigners, allowed to sojourn only by permission of the Governor.—In the case of Alleaume, a Frenchman, 1836, information having been lodged with the Lieut.-Governor, charging him with having married a native belle, although his first wife was then living in France, he was ordered to leave the Island forthwith, but on procuring bail he was allowed till the following Saturday to settle his affairs ; whereupon his friends, by way of an expedient for keeping him here, got him arrested for debt, and lodged in goal, but it was useless. In the case also of Mr. Fulgence, a Frenchman, who was ordered to leave the island, he was arrested for a fictitious debt of two hundred francs, but was expelled notwithstanding.

Foreign Attachment.—Effects in the hands of an agent in London, belonging to a person domiciled in Jersey or Guern-

sey, may be attached for debt contracted in the islands, by suing out process of attachment in the Lord Mayor's Court :—*What may be attached* : The plaintiff in a foreign attachment cannot take money or goods out of the hands of a granishee who has a lien thereon, without discharging the lien. *Giles v. Nathan*, 5 Taunt. 558 ; 1 Marsh 226. Money awarded under a rule of Court cannot be attached, *Grant v. Harding*, 4 T. R. 313, n.—*Debt and Parties within Jurisdiction* : In a foreign attachment it is not necessary that the debt should arise within the jurisdiction, or that the defendant in that court should reside within it, or be actually summoned. *Harrington v. Macmorris*, 5 Taunt 228, 1 Marsh 33. If a merchant abroad orders goods of a shopkeeper residing within the city, and the shopkeeper sends them from his shop to be shipped in pursuance of the order, the price of the goods may be sued for in the Mayor's Court as a debt arising within the city. *Huxham v. Smith*, 2 Camp 21.—*Ellenborough*. In a plea of foreign attachment it is necessary to aver that the granishee resided within the jurisdiction of the Lord Mayor's Court. *Tamm v. Williams*, 2 Chit. 438 ; 3 Dougl. 281.—*Proceedings* : A foreign attachment pending is no bar to an action until judgment be recovered in the attachment. *Nathan v. Giles* and *Giles v. Nathan*, 5 Taunt 558, 1 Marsh 296. A proceeding by foreign attachment against B, who surrendered and pleaded to the jurisdiction of the Court ; A discontinued the foreign attachment and arrested B by process out of K B :—Held, that the foreign attachment was not such an arrest as to entitle B to be discharged out of custody in the present suit on entering a common appearance. *Wood v. Thomson*, 1 Marsh 395 ; 5 Taunt 851 ; and see *Bromley v. Peck* 1 Marsh 397, n. 5 Taunt 852, n. The Court of C. P. will not stay proceedings in an action commenced there to abide the event of an action in the Mayor's Court where it is sought to try in a foreign attachment the title to the same property which is in suit there. *Smidt v. Ogle*, 6 Taunt 74.

Forgery is punished only as a fraud, by imprisonment, whipping or banishment. In 1798 a woman was sentenced to six weeks' imprisonment for circulating base coin. In 1799 an individual was imprisoned for six months. In 1828 Alexander was exposed in the pillory and imprisoned, and in 1835, Bershon, Myers and Cohen, were exposed in the pillory, imprisoned the two first for 12 months and the latter for 6, and afterwards banished for life, and their property confiscated, for having participated in the forgery, and circulation of Guernsey banknotes.  Banishment means transportation to England !

on credit, brings them to Jersey and sells them to his *wife* (!) they having been separated *quant aux biens*, can the said goods be attached for debt? **ANSWER.**—No; the creditor might whistle for his money. **Q.**—If a person obtains goods in England, on credit, and brings them to Jersey, or comes here largely indebted on the other side of the water, can he make cession in Jersey, unknown to his English creditors? **A.**—Yes: and consequently without surrendering the property. **Q.**—If a person obtains goods in England or elsewhere, under false pretences by swindling or by robbery, and decamps with the same to Jersey, can he be seized, convicted and punished in the Island as a criminal? **A.**—No; he is beyond the reach of the Jersey law, and can only be sued as a debtor—the Court having no jurisdiction over offences committed out of the Bailiwick. This principle was recognized in the case of “Matthews and Prowden,” in 1835, who had been lodged in jail, for thefts committed in the Guernsey Roadstead, on board the pleasure boats *Sarnia*, *Cosack*, and *Lyra*. The Court declared itself incompetent to take cognizance of the matter and ordered the prisoners to be discharged and the stolen goods to be given up to the parties. **Q.**—If a person obtains goods in Jersey, or elsewhere, under false pretences, by swindling or by robbery, and decamps with the same to England, can he be seized, convicted, and punished, as a criminal? **A.**—Yes; because the taking of the goods to England is, in judgment of law deemed completing the offence in England. This doctrine was recognized at the Lent Dorset Assizes, in 1832, when George Prowes was convicted of stealing wearing apparel, the property of Thomas Cundy, of St. Helier, Jersey, and sentenced to be transported for seven years.

Governor.—The principal officer in Jersey,—he who more immediately represents the sovereign,—whose power is the least subject to control,—and who claims the precedence of all others,—is the governor. This office was anciently considered in so honourable a light, that it was filled by persons of the first rank, even by princes of the blood: it is now usually the post of an officer of high military rank. **His Appointment.**—The Governor is appointed by Letters Patent from the Crown, and since the office has become a sincere, he is generally sworn in before the Privy Council; which is afterwards notified by an Order to the Jersey Court, where it is registered. This supersedes the necessity of producing the Patent, as was done in former times. **His Revenue.**—To support the dignity of this appointment, the Queen allows the holder of it

her whole revenue in the island ; deducting some fees and salaries. This revenue arose formerly from seven manors, let out in fee farm ; and from various other sources : at present, it consists principally of the corn tithes of ten parishes. The tithes of St. Saviour's are annexed to the deanery ; those of St. Helier's were granted by James the second to Sir Edward Carteret. The Governor appoints a peculiar officer, stiled *Le Receveur de la Reine*, who receives these rents, &c. There are now two receivers. Mr. Durell in his notes on Falle's History of Jersey, says, the Governor "is relieved from the payment of any charge for military matters, and from making remittances of any part of the revenue to the Exchequer, as was done by his ancient predecessors ; but he is still obliged to provide for the administration of justice : and other expences connected with the civil establishments of the island. After making these deductions the office is become a perfect sinecure, granted either as a Royal favour, or as reward for distinguished military services to the State. The Governor takes no part in the administration of the island, and indeed none have made any permanent residence in it since the time of Sir John Peyton under James I. The King's Revenues in Jersey vary considerably, owing to the fluctuations in the price of corn, and to the value and quantity of fines which may accrue to his Majesty. In 1822, Mr. Hume procured an account of the Revenues and Establishments in the Channel Islands to be laid before Parliament. It would be tedious and unnecessary to make long extracts in this place ; but suffice it to say, that the Royal Revenue in Jersey was then worth about £3000, one half of which was expended in local charges, and that the other was remitted as a sinecure to the Governor. It is supposed to be the intention of Government, that on the next vacancy the office of Governor is not to be filled up, and that the commanding officer will act as Governor, and enjoy provisionally the Royal Revenues for his remuneration. If this could be carried into effect it would be a saving to Government of all the allowances which are now made for the support of the Lieut. Governor."

—*His Jurisdiction.*—Mr. Plees, in his "account of Jersey," says, "The power of the governors has varied, as their respective commissions have, at different times, been enlarged or restrained. Anciently the governor had a mixed power. He had the administration of both the civil and military authority. He was judge as well as governor, and had the disposal of all places, in court, church, and garrison. So extensive a command shows the dignified character of this office in those times. To relieve himself from the various duties imposed on him, he

at length reserved the exercise of the military part alone, and transferred the judicial to another, who thereby obtained the title of bailiff, but who was still a dependant of the governor. The other ministers of justice were equally his creatures. King John began, and King Henry the seventh completed, the establishment of a jurisdiction wholly distinct; the latter taking from him the nomination of the bailiff, and other officers of the court, and forbidding his interposition in any civil affairs. But though the governor has no proper jurisdiction, yet, in consequence of his dignity, his presence is frequently required in court, and is in some respects necessary. He has the court under his protection, and is obliged to assist the bailiff and jurats, with his authority, in the execution of their decrees. He has power, with the concurrence of two jurats, to arrest and imprison any inhabitant, upon vehement suspicion of treason. Foreigners may neither settle, nor even enter the island, without his permission. He may protract the assembling of the States, and render invalid any business therein transacted without his consent; but this with some restrictions. He may attend and deliberate with the States; but in their assembly he has only a negative voice; and even this prerogative he is directed not to use, except on particular occasions. In fine the governor's authority is now principally a military command. He has the custody of the fortresses; the regular troops are under his immediate control; and so in a great measure, is the island militia. In ancient times there was not any lieutenant governor of the king's own appointment, and in the pay of the crown. That office seems to have been created, to supply the now customary non residence of the governor himself."

Governor, his Lieutenant is the chief military officer in the island, and is commander in chief of the forces and garrisons. Both the Governor and Lieut. Governor are appointed by the Crown. When the Lieutenant Governor was appointed and paid by the Governor, he derived his whole authority from him, and acted merely as his agent, or at most as Deputy Governor; and when so circumstanced, no doubt he was obliged to follow the orders of his constituent, for then the Governor was liable for the acts of his Deputy, conformably to the Statute, 12. Car 2, cap. 32: but when, at a subsequent period, the Lieutenant Governor held his Commission directly from the King and received his salary from the exchequer, he became rather the King's Lieutenant than the Governor, being vested with the same authority as the Governor, and representing *virtute officii* his majesty's person in the island, quite independently of the Governor. The chief rule he had to observe was to

fulfill the conditions of his oath of office, which made him personally responsible to the King, and if he violated it, he could not plead the orders of the Governor in his defence, the Governor himself being subordinate to his Majesty. The Lt. Governor of the island is, in fact, upon the same footing and establishment as many local governors of forts and castles in England and receives a salary direct from the Crown." *His power and privileges.*—The Lt. Governor has all the power and privileges of the Governor, the latter being allowed to stay away and to enjoy his situation as a sinecure. 'It is even doubtful,' (says Mr. Durell) 'if his residence would enable him to exercise the functions of a Governor, without some new permission from the Crown. The Lieut. Governor, in addition to his allowances from Government, receives from the King's revenues in Jersey, nine shillings and six pence a day, according to a report of these revenues laid before the House of Commons in 1822, and about £20 worth of fowls for his table.' *His Responsibility.*—The Governor, and Lieut. Governor hold office only during the King's pleasure, and in case of oppression or other misconduct, any individual aggrieved may lay complaint against either of them before his Majesty in Council, and petition for his removal. [*Mostyn v. Fabrigas*, Cowp. 175. It seems, however, that the power of the King in Council extends to removal only and not to further punishment.—European settlements, vol. 2. p. 302.] The Court of King's Bench in England also has cognizance of offences committed by Colonial Governors, or they may be tried before commissioners assigned for that purpose by his Majesty. [By virtue of the Statutes 11 and 12, W. 3. c. 12. and 42 Geo. 7. c. 85. Vide 8 East, 31.] and their conduct is of course examinable, where other remedies fail, in Parliament.—[*Clarke's Colonial Law.*] *His induction into office.*—The Lieutenant-Governor is inducted into office with great ceremony before the full Court, where he produces his Patent, which after having been read, the oath prescribed in the Code of Laws, is administered to him. *His Oath.*—"Inasmuch as it has pleased God to call you to the office of Lieut. Governor of the Castles and Isle of Jersey, you promise and swear here in the presence of God, that you will faithfully exercise the said office, under our Sovereign Lady Queen Victoria the First, by the Grace of God, Queen of Great Britain and Ireland, and the Dominions belonging thereto, renouncing all foreign powers and preserving only her rights. You shall assist and defend all Jurisdictions, Privileges, Pre-eminences and Authorities belonging to her Majesty, and with all your knowledge and Power, keep and

preserve the said Isle and Castles against the incursions and surprises of enemies, as also all Liberties, Rights, Dignities, Laws, Customs and privileges of the said Isle and Castles, for the public good and advancement of the same. Also you shall render your assistance to the justice of Her Majesty, that it may be revered and obeyed, and her sentences and ordinances duly executed; you shall oppose all traitors, murderers, thieves, house breakers, mutinous and seditious persons, that the force may remain to the Queen: you promise the same to the acquittal of your conscience." *Declaration.*—After the Lt. Governor has taken the oath, he is required to subscribe to the usual declaration made by public functionaries on taking office, that he will not conspire to overthrow the Church, as by law established. *His absence or death.*—On the absence or death of the Governor, Lieut. Gov., or such officer as may be in command, the Court has the power of swearing in the next superior military officer, as Deputy Governor, and during his administration he is entitled to the Lieut. Governor's pay.

Governor, his presence in Court.—The Governor seldom attends the Royal Court, as his presence might be in some measure attributed to the desire of overawing its proceedings. Mr. Dumaresq, Chap. V. thus describes his power. "He is also to be present in all matters that concern His Majesty's interest or prerogative, but has no voice. But the King's Minister, by his order, may appeal."

Governor, interdicted from nominating and appointing the Crown Officers.—The following is the concluding clause of the Letters Patent of James I: "And to the end that hereafter all difficulties concerning the Nomination, Institution, and Appointment of the Officers aforesaid may be taken away, We, by the advice and mature deliberation of our Counsell, have commanded and ordered, and by these Presents for Us, our Heirs, and Successors, do command and order, that henceforth no Bailiffe, Deane, Vicomte, Procuror, Advocate to Us, shall be made and appointed, but immediately by Letters Patent under our Great Seal, in the Name and by the Authority of Us, our Heirs, and Successors, Kings of this Realm of England, and Dukes of Normandy, and not otherwise. And we do likewise command and enjoyne, and by these Presents do straightly command and enjoyne the said Sir John Peyton, and all other Captains or Governors of the said Island, present and to come, never hereafter to attempt or intermeddle in any wise in the Nomination, Institution, and Appointment of the said Offices of Bailiffe, Deane, Viscount, our Attorney, or Advocate, or any other Public Officer of Justice within the

said isle, or in any wise to infringe or violate, either the Privilege granted to the inhabitants thereof by the most excellent Prince of famous Memory King Henry the Seventh, or the Statutes and Ordinances made by the same King for the good and peaceable Government of the same island, upon paine to incur our indignation, and further Punishment at our Pleasure. And to the end that this Act be duely put in execution, We do further command that the same be entered as well into the Register of Counsell Causes, as in the Royal Court there, and to give notice from time to time unto Us and our Privy-Counsell of the Contraventions attempted in prejudice of the same. For such is our Pleasure. In witness whereof We have caused these our Letters to be made Patent. Witness ourselves at Westminster the 9th day of August in the thirteenth year of our Reign of England, France, and Ireland, and of Scotland the nine and fortieth."

Grande-Enquête, or Grand Inquest, is composed of 24 persons being *principaux*, taken from the three neighbouring parishes, in which the prisoner lived. They are summoned on the evening previous to trial, and after sun set, so that they may not have any intercourse with each other.

Grande visite des Chemins.—This for the parish of St. Helier, is composed of the Bailiff and three or more Jurats and officers of the Court, assisted by a Jury of twelve of the principal inhabitants called *voyers*. The Jury is sworn to conduct the Court through the public roads, and to report to it all impediments and nuisances which they may find therein : when the parties causing the same are mulct in certain fines from one shilling and sixpence upwards. After they have perambulated the parish, the Court and Jury dine together at some hotel, the Magistrates and Officers in one room and the Jury in another. For this repast, the Governor, (Lord Beresford) who pays all the public officers, and for their dinners, out of the Crown Revenues, allows the niggardly price of one shilling and sixpence per head !

Greffier, is clerk of the Court : he receives £45 per annum, for his attendance at all the sittings of the Court, the States, and at the Greffe Office ; for drawing up and registering all public documents, acts, orders, judgments, and sentences, and for keeping all the records thereto belonging ; for furnishing the Crown Officers with copies of all proceedings in criminal cases and the like. He is also entitled to certain fees for drawing copies of public documents for private parties. The following is a translation of his oath of office :—You swear and promise by the faith and oath that you owe to God, that well

and faithfully you will execute the office and charge of Greffier in this Royal Court of our Sovereign Lady Queen Victoria, the First, by the Grace of God, Queen of Great Britain and Ireland, Defender of the Faith &c., the Majesty of whom you acknowledge under God, supreme Governor in all her Kingdoms, Countries, Isles, Lands and Seigneuries, in all causes as well spiritual as secular: also that you will be faithful and loyal to Her Majesty and to her nobles and legitimate successors; that you will register faithfully the sentences of the Court according as they shall be pronounced by the mouth of the Judge: that you will show obedience to the Bailiff, the Lieutenant Bailiff and Jurats, and keep faithfully the registers of the Court and other acts or public charters which shall be committed to you to keep; and that if any thing comes to your knowledge which belongs to the rights of her Majesty, which was alienated you shall inform the Court thereof.

Greffier Arbitre.—The Greffier or Clerk of the Court, exercises the duty of a Tax master, and referee for the settlement of such accounts as may be sent to him by the Court, and holds a sitting for that purpose, immediately after the rising of the *Cour du Billet*, every fortnight, during term. The cause must be summoned before him in due form; first, to deliver the account to defendant, of which he makes a record; secondly, to receive defendant's answer, in which is embodied his pretension and objections, when a record is made of the same, in like manner; thirdly, for plaintiff to put in his reply, which being duly recorded, the Greffier refers the parties back again to the Court that it might be ordered accordingly. This measure is generally adopted at the closing of the term, when a plaintiff wishes to postpone judgment, and is the means of prolonging a cause about six or nine months, without one single point being gained, with the exception of drawing up a plea, which might otherwise be done in five minutes.

Greffe-Office—"Orders for bringing in and for the safe-keeping, as well of all evidences belonging to His Majesty, as also of all evidences whatsoever concerning the public estate of the Isle of Jersey; made and set down by us Sir Robert Gardiner, Knight, and James Hussey, Doctor of Laws, His Majesty's Commissioners, 1608.

"Whereas there hath been divers and sundrie complaints exhibited unto us, as well by the Bailly and Jurats as by his Majesty's Procureur, shewing that both his Majesty's evidences, as extents, rentals with such like, and the charters, decrees, court-rooles, and other muniments, escripts and actes of the Royal Court are not soe safely and orderly kept as they

ought to be, in some certain place or office, whether all men, to whom it shall appertain, may resort to see and peruse them as their need shall require; and for that it is likewise complained that many of them have been, and are yet, dispersed into the hands of sundrie as well of justices as others, being but private persons and not sworn to the common good of the Isle, soe that as well as the records and writings appertaine to the Royal Court of Justice, as also the evidences aforesaid concerning his Majesty, are in danger to be torn, raised, corrupted, and defaced or lost, which if it should happen, would greatly tend to the prejudice, hinderance, and detriment of his Highness and of all his well-disposed subjects within this Island, for avoiding all which, and the like inconveniency or mischief, which thereof hereafter ensue, we doe by the consent of Sir John Peyton, the now Governor, and the Bailly, and jurates, appointe, order and decree as followeth.

I.—“ That all evidences, any wise concerning the sole title and interest of His Majesty, shall between this and Christmas next, be brought and delivered to the now Governor, or in his absence to the Lieutenant for the time being, upon paine to be inflicted upon every party that shall longer detain any of the said evidences contrary to the true meaning of this our order, the sum of five Pounds sterling, to be levied by the Governor, or his officers, after due conviction of the parties, before the Bailly and Justices which evidences will require to be safely kept, for his Majesty's use, by the said Governor and his successors; whereof there shall be an authentical inventory made and delivered to the Bailly and Justices, for the best preservation of his Majesty's rights upon any occasion, soe that on the change of every Governor his Majesty may know what evidences he may justly challenge of their executors, and where to finde a true note of the same.

II.—That all evidences and public records, concerning the public state of the Island, shall be brought in and delivered to the Bailly and Justices by the time aforesaid, and upon like paine of five pounds to be lieved by the said Bailly and Justices, and the Officers appertaining to the Court, which evidences we require to be by them safely kept in their common chest or treasury, under three strong locks and keys, the which one shall always be kept by the Bailly, one other by the chief Jurat, and the third by the Greffier.

III.—That it shall not be lawful for the Bailly or any of Justices, or for any other person whatever, to take away any of the said evidences, out of the said chest or treasure, into his own custody, to be seen or copied out, or for any other

purpose whatsoever, without the consent of the Bailly and seven of the Jurats at least and that only to shew for some public good or necessary use concerning the state, or the poore inhabitants of the said Island.

IV.—If any man for his private use or satisfaction, shall desire to see the said evidences, or any of them, that then he either shall do it in the presence of the keys keepers or their deputies, or else a true copy thereof, by them appointed, or by order of the Court, shall be transcribed by the Greffier, and by him delivered with true testie or concordat, signifying that it doth agree with the original of that which is transcribed, to the party desiring the same ; the said party contenting and paying to the Greffier for his paine as by the Bailly and Justices shall be appointed.

V.—In case any of the keepers shall be sick, or out of the Island, or soe detained, his keye and the use thereof shall be requisite and needful, that then it shall be lawful unto him, for the time onley and not longer, to leave his keye with the Jurat that is next in order and degree, unto him according to the course and manner of the sitting in the Royal Court ; and if the Bailly happen upon the like occasion to be absent, then he shall leave the same with his Lieutenant for the time being.

VI.—That those acte-books and Court rooles only which have been made since the last twenty years, whereof there may be necessary use, and dayly use, shall be set apart in a public chest in the treasury, wherof the Greffier onley shall have the custody and keepiug, and shall not take or carry, or suffer to be taken or carried, at any time out of the public chest or treasury any of the said actes, books, or Court rolles, but shall deliver a true copy of any thing in them contained whensoever any shall require it, receiving for his paine the fees accustomed.

VII.—That there shall be a catalogue alphabettically made of such evidences as concern the Isle, wherein shall be set down a note of the Kings, in whose lives they were made or granted, and of the persons or matters in them contained.

VIII.—That there shall be a book, called or known by the name of a Ledger-book, well bound, wherein the Greffier shall write or cause to be written, a true copy of the extent and of all the said evidences, which book shall remain with the Bailly for the time being ; unto which booke in the end thereof, an index or repertory shall be added, concerning the principal matters of the said book, and in what leaf of the book the same are written.

IX.—And because the making and finishing of this book will require more labour than may be conveniently done and effected by the Greffier, as we verily suppose, we doe therefore wish the Bailly and Justices, to assign and join some other unto him, whom they shall think most fit for the expedition of this service.

X.—Lastly, we order that if the Governor, his Majesty's Procureur or Advocate, or any of his Majesty's officers, shall have necessary occasion at any time for any cause whatsoever concerning his Majesty, to search for, see, or copy, out of any of the evidences aforesaid, this shall be allowed unto every of them without paying any fees for the same, soe that all other points and circumstances in our orders aforesaid set down for the safe keeping of the said evidences be duely kept and observed.

Guardians, called in French *Tuteurs*, are appointed to take care of Minors, generally those who are left orphans; they are elected by six of the nearest relations, on being summoned to appear before the Court for that purpose. Their duties are set forth in the *Code of Laws* of 1771, as follows:—Tuteurs shall be bound to make inventory on their admission, of the goods moveable and immoveable of minors, and of the titles, papers and evidences in the presence and with the assistance of the majority at least of the electors, and to deliver them within forty days under their signature on pain of a fine, which shall not exceed two hundred livres against the Tuteurs neglecting, and to answer the losses or damages which shall be caused to Minors. They shall take care of the persons of Minors; shall see to their education and conduct, and incur the necessary and just expenses, according as their situation and means demand. They shall be obliged to take the same care of the goods and affairs of minors as a good Father of a Family takes of his own, on pain of answering for the injury or damage contrary to such care. They shall cause to be sold without delay, goods of a perishable nature, and employ the monies to the benefit of Minors, except things the use of which might be necessary for the minors, and in case that the Guardianship should not continue but for a short time, or when it shall be judged proper to keep them until they shall become of age, in which the interests of the minors are concerned, the Tuteurs shall take advice of those persons who shall have appointed them and who are to give them advice. The monies which shall arise from the Sale of moveables and other effects and those which shall be found to be the property of minors, shall be employed by their Tuteurs, first in discharging their

debts, and the surplus as well as the monies arising from other causes, or even the savings of their revenues in that manner, as shall be judged by the Tuteurs and Electors most profitable to the minors, and for that purpose the Tuteurs shall have a delay of six months for their settlement, after that they shall have in their hands a sum sufficient, after which they shall be obliged to account in their name for the interests unless that they show that they have done their utmost but have not found any way to employ it.' The following is a translation of the Oath which the Tuteur or Guardian takes on accepting his office: 'You swear and promise, by the faith and oath that you owe to God, that well and faithfully you will execute the office of Tuteur or Tuteress of the child (or children) under age, of ———; that you will bring them up in the fear of God; that you will preserve and augment their goods, honor, and profit, as your own, and better if it shall be in your power; that you will regulate yourself by the good counsel and advice of your electors, and that at the end of your term of office, you shall render good and faithful accounts to whomsoever it shall appertain, and perform generally all other duties which belong to the said office.' Guardians are bound to place all monies out at interest for account of their wards, and in default of so doing, are liable to pay interest thereon, with the exception of one year, which is allowed for making an investment. This principle is clearly laid down by *Terrien* and other commentators, and has been confirmed by the Jersey and Guernsey Courts on several occasions. In transfers of property, the law requires that four out of seven electors shall advise the Guardian, and a document must be signed by them authorizing him to sell, buy or otherwise transact any business relating thereto. In the case of *Gibaut, Curator of P. Lempriere and wife v. certain Electors*, 1836, actioning them to show cause why an opposition lodged with the Bailiff, against plaintiff passing a contract for the alienation of certain property which he had agreed to sell, the Court held inasmuch as only three of the Electors out of seven, had authorized the sale, though the others might have verbally assented to it, that the opposition should be confirmed, and therefore discharged the defendants from the action.

Guardians their responsibility.—By the law and practice of the Royal Court of the island, a guardian who has not made himself responsible for a debt one from a deceased person, is not subject or liable to be sent to prison for any such debt—[Adv. P. Le Couteur, see his affidavit, March 9, 1833, in the

matter between Le Gallais and others v. De Veuille, Bailiff, before the Privy Council.] In the case, however, of Mr. F. J. Le Montais, guardian of the persons and estate of the children of the late John Touzel, who was personally arrested by the Deputy Viscount, at the suit of Clement Francis Chevalier, a creditor of the said Touzel, the Court confirmed the arrest, and adjudged him to pay the said demand. [See Le Montais' affidavit. *Ibid.*]

Guardian, who disqualified for.—In the case of Mr. P. Mauger, v. C. De Ste. Croix, Esq., guardian of the children of the late Mr. James Lynn, the Court, in 1820, decided that the defendant being Deputy Viscount could not be a guardian or tutor according to the law and custom of the island. In the case of De St. Croix and others appellants, v. Journeaux and others respondents, 1836, the Privy Council held conformably to an Ordinance of 1562, that a Jurat could not be elected guardian to a minor, and being a guardian, the moment he was elected Jurat he ceased to be entitled to act as guardian.

Habeas Corpus, Acts of.—The original Statute, is the 31 Ch. 2, c. 2, intituled "An act for the better securing the liberty of the subject, and for the prevention of Imprisonments beyond the seas." It extends to the Islands of *Jersey* and *Guernsey*, and was transmitted from the Council office to the authorities of both Islands in 1832, with an order to register the same, (not that the registration was essential to the act) but which order was disobeyed. The statute enacts. 1. That on complaint and request in writing by or on behalf of any person committed and charged with any *crime*, (unless committed for treason or felony expressed in the warrant; or as accessory, or on suspicion of being accessory, before the fact, to any petit-treason or felony; or upon suspicion of such petit-treason or felony, plainly expressed in the warrant; or unless he is convicted or charged in execution by legal process), the lord chancellor or any of the twelve judges, in vacation, upon viewing a copy of the warrant, or affidavit that a copy is denied, shall (unless the party has neglected for two terms to apply to any court for his enlargement) award an *habeas corpus* for such prisoner, returnable immediately before himself or any other of the judges; and upon the return made shall discharge the party, if bailable, upon giving security to appear and answer to the accusation in the proper court of judicature. 2. That such writs shall be indorsed, as granted in pursuance of this act, and signed by the person awarding them. 3. That the writ shall be returned and the prisoner brought up, within a limited time according to the distance, not exceeding in any

case twenty days. 4. That officers and keepers neglecting to make due returns, or not delivering to the prisoner or his agent within six hours after demand a copy of the warrant of commitment, or shifting the custody of the prisoner from one to another, without sufficient reason or authority (specified in the act), shall for the first offence forfeit £100, and for the second offence £200 to the party grieved, and be disabled to hold his office. 5. That no person, once delivered by *habeas corpus*, shall be recommitted for the same offence, on penalty of £500. 6. That every person committed for treason or felony shall, if he requires it the first week of the next term, or the first day of the next session of *oyer* and *terminer*, be indicted in that term or session, or else admitted to bail; unless the king's witnesses cannot be produced at that time: and if acquitted, or if not indicted and tried in the second term or session, he shall be discharged from his imprisonment for such imputed offence: but that no person, after the assizes shall be open for the county in which he is detained, shall be removed by *habeas corpus*, till after the assizes are ended; but shall be left to the justice of the judges of assize. 7. That any such prisoner may move for and obtain his *habeas corpus*, as well out of the Chancery or Exchequer, as out of the King's Bench or Common Pleas; and the lord chancellor or judges denying the same, on sight of the warrant or oath that the same is refused, forfeit severally to the party grieved the sum of £500. 8. That this writ of *habeas corpus* SHALL RUN INTO THE COUNTIES PALATINE, CINQUE PORTS, AND PRIVILEGED PLACES, AND THE ISLANDS OF JERSEY AND GUERNSEY, any law or usage to the contrary notwithstanding. 9. That no inhabitant of England (except persons contracting, or convicts praying, to be transported; or having committed some capital offence in the place to which they are sent) shall be sent prisoner to Scotland, Ireland, Jersey, Guernsey, or any places beyond the seas, within or without the king's dominions: on pain that the party committing, his advisers, aiders, and assistants, shall forfeit to the party grieved a sum not less than £500., to be recovered with treble costs; shall be disabled to bear any office of trust or profit; shall incur the penalties of *præmunire*; and shall be incapable of the king's pardon.

The powers of the 31 Ch. 2. c. 2. are by the 43 Geo. 3, c. 140, extended to bringing up prisoners in England, for trial or examination by Courts Martial, Commissioners of Bankrupt, &c. but it does not appear that this Act reaches the Islands. The subsequent Act 56 Geo. 3, c. 100, intituled; "An Act for more

effectually securing the liberty of the subject," extends to *Jersey, Guernsey, and Man*, and was transmitted from the Council Office in 1832, to the authorities of both Islands, with an order for it to be registered, (not that the registration was essential to the Act,) but which Order was disobeyed. The following is a copy of the Order sent to Jersey :—

" At the Court of St. James's, the 4th of July, 1832.— Present : the King's Most Excellent Majesty in Council. It is this day ordered by his Majesty, by and with the advice of his Privy Council, that a printed copy of an Act, passed in the 56th year of his Majesty George the Third, be transmitted to the Royal Court of the Island of Jersey ; viz—An Act for more effectually securing the liberty of the subject ; and it is hereby *further ordered*, that the said Act be registered and published, NOT AS BEING ESSENTIAL TO THE SAID ACT, but that his Majesty's subjects in the said Island may have notice of the said Act having passed, and that THEY ARE BOUND THEREBY. And the Lieutenant-Governor, Commander in Chief, and also the Bailiff and Jurats of the Island of Jersey, for the time being, are to give the necessary directions herein as to them may respectively appertain. C. GREVILLE."

Here follows the Act :—

Whereas the Writ of *Habeas Corpus* hath been found by Experience to be an expeditious and effectual Method of restoring any Person to his Liberty, who hath been unjustly deprived thereof : And whereas extending the Remedy of such Writ, and enforcing Obedience thereunto, and preventing Delays in the Execution thereof, will be advantageous to the Public ; And whereas the Provisions made by an Act passed in *England* in the Thirty-first Year of King *Charles* the Second, intituled *An Act for the better securing the Liberty of the Subject, and for Prevention of Imprisonment beyond the Seas*, and also by an Act passed in *Ireland* in the Twenty-first and Twenty-second Years of His present Majesty, intituled *An Act for better securing the Liberty of the Subject*, only extend to Cases of Commitment or Detainer for criminal or supposed criminal Matter ; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That where any Person shall be confined or restrained of his or her Liberty (otherwise than for some criminal or supposed criminal Matter, and except Persons imprisoned for Debt or by Process in any civil Suit) within that Part of *Great Britain* called *England*, *Dominion of Wales*, or *Town of Berwick-upon-*

Tweed, or the Isles of *Jersey*, *Guernsey*, or *Man*, it shall and may be lawful for any One of the Barons of the Exchequer, of the Degree of the Coif, as well as for any One of the Justices of One Bench, or the other ; and where any Person shall be so confined in *Ireland*, it shall and may be lawful for any One of the Barons of the Exchequer, or of the Justices of One Bench or the other in *Ireland* ; and they are hereby required, upon Complaint made to them by or on the Behalf of the Person so confined or restrained, if it shall appear by Affidavit or Affirmation (in Cases where by Law an Affirmation is allowed) that there is a probable and reasonable Ground for such Complaint, to award in Vacation Time, a Writ of *Habeas Corpus ad subjiciendum*, under the Seal of such Court, whereof he or they shall then be Judges or One of the Judges, to be directed to Person or Persons in whose Custody or Power the Party so confined or restrained shall be, returnable immediately before the Person so awarding the same, or before any other Judge of the Court under the Seal of which the said Writ issued.

II. And be it further enacted by the Authority aforesaid, That if the Person or Persons to whom any Writ of *Habeas Corpus* shall be directed according to the Provision of this Act, upon Service of such Writ, either by the actual Delivery thereof to him, her, or them, or by leaving the same at the Place where the Party shall be confined or restrained, with any Servant or Agent of the Person or Persons so confining or restraining, shall wilfully neglect or refuse to make a Return or pay Obedience thereto, he, she, or they shall be deemed guilty of a Contempt of the Court, under the Seal whereof such Writ shall have issued ; and it shall be lawful to and for the said Justice or Baron, before whom such Writ shall be returnable, upon Proof made by Affidavit of wilful Disobedience of the said Writ, to issue a Warrant under his Hand and Seal, for the apprehending and bringing before him, or before some other Justice or Baron of the same Court, the Person or Persons so wilfully disobeying the said Writ, in order to his, her, or their being bound to the King's Majesty, with Two sufficient Sureties, in such Sum as in the Warrant shall be expressed, with Condition to appear in the Court of which the said Justice or Baron is a Judge, at a Day in the ensuing Term to be mentioned in the said Warrant, to answer the Matter of Contempt with which he, she, or they are charged ; and in case of Neglect or Refusal to become bound as aforesaid, it shall be lawful for such Justice or Baron to commit such Person or Persons so neglecting or refusing, to the Jail or Prison of the Court of which such Justice or Baron shall be a Judge, there

to remain until she, he, or they shall have become bound as aforesaid, or shall be discharged by Order of the Court in Term Time, or by Order of one of the Justices or Barons of the Court in Vacation; and the Recognizance or Recognizances to be taken thereupon shall be returned and filed in the same Court, and shall continue in force until the Matter of such Contempt shall have been heard and determined, unless sooner ordered by the Court to be discharged: Provided, that if such Writ shall be awarded so late in the Vacation by any one of the said Justices or Barons, that, in his Opinion, Obedience thereto cannot be conveniently paid during such Vacation, the same shall and may, at his Discretion, be made returnable in the Court of which the said Justice or Baron shall be a Justice or Baron, at a Day certain in the next Term; and the said Court shall and may proceed thereupon, and award Process of Contempt in case of Disobedience thereto, in like Manner as upon Disobedience to any Writ originally awarded by the said Court: Provided also, that if such Writ shall be awarded by the Court of King's Bench, or the Court of Common Pleas, or Court of Exchequer, in the said Countries respectively, which last-mentioned Court shall have like Power to award such Writs as the respective Courts of King's Bench and Common Pleas in each of the said Countries now have, in Term, but so late that, in the Judgment of the Court, Obedience thereto cannot be conveniently paid during such Term, the same shall and may, at the Discretion of the said Court, be made returnable at a Day certain in the then next Vacation, before any Justice or Baron of the Degree of the Coif, or if in *Ireland*, before any Justice or Baron of the same Court, who shall and may proceed thereupon, in such Manner as by this Act is directed concerning Writs issuing in and made returnable during the Vacation.

III. And be it further enacted by the Authority aforesaid, That in all Cases provided for by this Act, although the Return to any Writ of *Habeas Corpus* shall be good and sufficient in Law, it shall be lawful for the Justice or Baron before whom such Writ may be returnable, to proceed to examine into the Truth of the Facts set forth in such Return, by Affidavit or by Affirmation (in Cases where an Affirmation is allowed by Law) and to do therein as to Justice shall appertain; and if such Writ shall be returned before any One of the said Justices or Barons, and it shall appear doubtful to him on such Examination, whether the material Facts set forth in the said Return, or any of them, be true or not; in such Case it shall and may be lawful for the said Justice or Baron to let to bail the said

Person so confined or restrained, upon his or her entering into a Recognizance with One or more Sureties, or in case of Infancy or Coverture, or other Disability, upon Security by Recognizance, in a reasonable Sum, to appear in the Court of which the said Justice or Baron shall be a Justice or Baron, upon a Day certain in the Term following, and so from Day to Day as the Court shall require, and to abide such Order as the Court shall make in and concerning the Premises ; and such Justice or Baron shall transmit into the same Court the said Writ and Return, together with such Recognizance, Affidavits, and Affirmations ; and thereupon it shall be lawful for the said Court to proceed to examine into the Truth of the Facts set forth in the Return, in a summary Way by Affidavit or Affirmation (in Cases where by Law, Affirmation is allowed), and to order and determine touching the discharging, bailing, or remanding the Party.

IV. And be it further enacted by the Authority aforesaid, That the like Proceeding may be had in the Court for controverting the Truth of the Return to any such Writ of *Habeas Corpus*, awarded as aforesaid, although such Writ shall be awarded by the said Court itself, or be returnable therein.

V. And be it declared and enacted by the Authority aforesaid, That a Writ of *Habeas Corpus*, according to the true Intent and Meaning of this Act, MAY BE DIRECTED AND RUN INTO any County Palatine or Cinque Port, or any other privileged Place within that Part of *Great Britain* called *England*, Dominion of *Wales*, and Town of *Berwick-upon-Tweed*, and the Isles of JERSEY, GUERNSEY, and MAN, respectively ; and also into any Port, Harbour, Road, Creek, or Bay, upon the Coast of *England* or *Wales*, although the same should lie out of the Body of any County ; and if such Writ shall issue in *Ireland*, the same may be directed and run into any Port, Harbour, Road, Creek or Bay, although the same should not be in the Body of any County ; any Law or Usage to the contrary in anywise notwithstanding.

VI. And be it further enacted by the Authority aforesaid, That the several Provisions made in this Act, touching the making Writs of *Habeas Corpus*, issuing in Time of Vacation, returnable into the said Courts, or for making such Writs awarded in Term Time, returnable in Vacation, as the Cases may respectively happen, and also for making wilful Disobedience thereto a Contempt of the Court, and for issuing Warrants to apprehend and bring before the said Justices or Barons, or any of them, any Person or Persons wilfully disobeying any such Writ ; and in case of Neglect or Refusal to

become bound as aforesaid, for committing the Person or Persons so neglecting or refusing to jail as aforesaid, respecting the Recognizances to be taken as aforesaid, and the Proceeding or Proceedings thereon, shall extend to all Writs of *Habeas Corpus* awarded in pursuance of the said Act, passed in *England* in the Thirty-first Year of the Reign of King *Charles* the Second, or of the said Act passed in *Ireland* in the Twenty-first and Twenty-second Years of His present Majesty, and herein-before recited, in as ample and beneficial a Manner as if such Writs and the said Cases arising thereon had been herein-before specially named and provided for respectively.

Habeas Corpus, writ of, a prerogative process issuing out of the superior Courts of Westminster, both in vacation and term time. There are various kinds made use of by the English Courts for removing prisoners from one court into another, and for the more easy administration of Justice : but the great and efficacious writ, in all manner of illegal confinement, is that of *habeas corpus ad subjiciendum*, directed to the person detaining another, and commanding him to produce the body of the prisoner, with the day and cause of his caption and detention, *ad faciendum, subjiciendum, et recipiendum*, to do, submit to, and receive whatsoever the judge or court awarding such writ shall consider in that behalf. This a high prerogative writ, and therefore by the common law issuing out of the court of Queen's bench not only in term-time, but also during the vacation, by a *fiat* from the chief justice or any other of the judges, AND RUNNING INTO ALL PARTS OF THE QUEEN'S DOMINIONS : for the Queen is at all times entitled to have an account, why the liberty of any of her subjects is restrained, wherever that restraint may be inflicted. If it issues in vacation, it is usually returnable before the judge himself who awarded it, and he proceeds by himself thereon ; unless the term should intervene, and then it may be returned in court.

Habeas Corpus, writ of, mode of applying for.—It is usually done in the Queen's Bench and Common Pleas, by motion to the court, as in the case of all other prerogative writs (*certiorari, prohibition, mandamus, &c.*) which do not issue as of mere course, without shewing some probable cause why the extraordinary power of the crown is called in to the party's assistance. For, as was argued by Lord Chief Justice Vaughan, " it is granted on motion, because it cannot be had of course ; and there is therefore no necessity to grant it ; for the court ought to be satisfied that the party hath a probable cause to be delivered." And this seems

the more reasonable, because (when once granted) the person to whom it is directed can return no satisfactory excuse for not bringing up the body of the prisoner. So that, if it issued of mere course, without showing to the court or judge some reasonable ground for awarding it, a traitor or felon under sentence of death, a soldier or mariner in the king's service, a wife, a child, a relation, or a domestic, confined for insanity or other prudential reasons, might obtain a temporary enlargement by suing out an *habeas corpus*, though sure to be remanded as soon as brought up to the court. And therefore Sir Edward Coke, when chief justice, did not scruple in 13 Jac. I. to deny an *habeas corpus* to one confined by the Court of Admiralty for piracy ; there appearing sufficient grounds to confine him. If a probable ground be shewn, that the party is imprisoned without just cause, and hath a right to be delivered, the writ of *habeas corpus* is then a writ of right, which may not be denied, but ought to be granted to every man that is committed, or detained in prison, or otherwise restrained, though it be by the command of the Queen, the privy council, or any other. The motion is founded on affidavit, setting forth the nature of the arrest or conviction, and the reason for which it is deemed irregular, and the detention illegal ; and the object of that motion is for leave to show cause, why the writ should be issued. This leave, as a matter of course, is always granted ; and after the rule has been made absolute, a writ is issued to the person in whose custody the complainant is alleged to be, commanding him within a certain limited and short time, to produce the body of the prisoner, and the warrant under which he is detained, before the Judge issuing the writ. The writ is served by a Tipstaff, and upon the return made thereto, by the party who has the custody of the prisoner, strict and instantaneous obedience to which is enforced by very severe penalties, the cause of imprisonment is set forth ; after which the facts alleged are contested by Counsel, and if the cause shall be deemed unlawful, the Judge or the Court before whom the return is made, and the prisoner is brought, is empowered and indeed bound to order him to be liberated forthwith, and this even though the prisoner might have been committed by a secretary, or other high officer of State, by the Privy Council, or by the King or Queen in person : so that no subject of the realm can be held in confinement by any power or under any pretence whatever, (except for the causes that are excepted in the Habeas Corpus Acts) provided he can find means to convey his complaint to any one of the four courts of Westminster Hall, or during their recess to

any one of the judges of the same, unless all those several tribunals agree in determining his imprisonment to be legal. *He may make application to them in succession* ; and if one out of the number be found, who thinks the prisoner entitled to his liberty, that one possesses authority to restore it to him.

Habeas Corpus, Writs of, issued to Jersey and Guernsey.—Writs of Habeas Corpus have been issued to the Islands, for several precedents are on record. Counsellor Allen, in his printed speech, addressed before the Royal Commissioners, says : “ in Siderfin and Ventris, there are cases reported of the issue of this Writ to Jersey.” And the writer of this has been assured, by a person who was clerk to the Prince of Bouillon, when admiral on this station, that he recollected perfectly well, that a person was removed from Jersey by a writ of Habeas : there appears however to be no mention made of these cases by any of the insular writers. An important one took place a few years since, and in order that posterity may not suffer any loss for want of a record of the same, the writer has collected the facts which are as follow :—

In the month of December, 1831, Mr. John Capes, one of the officers of the parish of St. Pancras, London, arrived in Guernsey, with five paupers, which were removed there as the place of their birth, where they were chargeable, having never afterwards acquired a settlement elsewhere, in pursuance of an Act of Parliament. The paupers were born to some soldiers when in garrison in that island, and as the Guernsey authorities did not recognize the Act under which they were removed, they refused to receive them ; excepting at the charge of the officer. In consequence of this, an action was instituted by the Constables of St. Peter-Port and the Vale parishes, (three of the paupers having been born in the former, and two in the latter parish,) before the Guernsey Court, to compel Mr. Capes to give security for their maintenance. He was served with process, and held to bail to answer the action, giving Colonel Isemonger as his surety. The Guernsey Court, as a matter of course, as they did not recognize the Act, decided against Mr. Capes ; the latter did not proceed to an appeal before the Court of Judgments, but took another course. In the mean time he was arrested again to satisfy the judgment, when Colonel Isemonger still remained bail that Mr. Capes should not leave the island until the matter was arranged. In the latter end of March, 1832, application was made to the Court of King’s Bench, when Lord Chief Justice Tenderden issued a writ of *Habeas Corpus ad subjiciendum*, for the removal of Mr. Capes to England.

The writ was directed to Mr. Thomas Le Retilley, the then Deputy Prevost, or Under Sheriff of Guernsey, and was served by Mr. Waters, a Tipstaff of the Court. On Mr. Waters's arrival in the island, Mr. Capes, who had been at large on his parole, was committed for payment of the sum of one hundred pounds, and on Mr. Le Retilley being served with the writ, he made a representation of the case to the Court of that island, and refused to give up his prisoner, or to make any return to the same. On this, an attachment was issued by Lord Tenderden against Mr. Le Retilley, directed to Mr. Hester, another Tipstaff, to produce the Deputy Prevost before his Lordship, that he should give bail in the sum of £600, to answer the said contempt. The following is a copy of it:—

“ENGLAND to wit. WHEREAS a writ of Habeas Corpus ad subjiciendum was on or about the 16th day of March last, duly awarded by me, Charles Lord Tenderden, Lord Chief Justice of his Majesty's Court of King's Bench, under the seal of the said Court, directed (amongst other persons in the said writ specified) to any person having the custody of John Capes, or by whom the said John Capes was then restrained of his liberty in the island of Guernsey, returnable before me immediately. And WHEREAS it appears to me by the affidavit of Richard Waters, that the said writ was on the 24th day of March last, served upon Thomas Le Retilley, (being the person by whom the said John Capes was then restrained of his liberty in the said Island,) by the actual delivery of the said writ to the said Thomas Le Retilley, and that the said Thomas Le Retilley hath wilfully neglected and refused to make a return, or to pay obedience thereto, and hath thereby been guilty of a contempt of the said Court. These are therefore to authorize and require you, and in his Majesty's name strictly to charge and command you, and every of you, on sight hereof, to apprehend and bring before me, or one of the Justices of the said Court, the said Thomas Le Retilley, in order to his being bound to the King's Majesty in the sum of three hundred pounds, with two sufficient sureties in the sum of one hundred and fifty pounds each, for his personal appearance in the said Court of King's Bench on the 1st day of the next ensuing Trinity Term, to answer the matter of the said contempt, or in case the said Thomas Le Retilley shall neglect or refuse to become bound as aforesaid, that he may be committed to the goal or prison of the said Court, there to remain until he shall have become bound as aforesaid, or shall be discharged by order of the said Court in Term Time, or of one of the Justices of the said Court in

vacation. Hereof fail not at your peril. Given under my hand and seal, the twenty-eighth day of April, one thousand eight hundred and thirty-two. To Thomas Gibbons, gentleman, my Tipstaff, and to all other Tipstuffs of his Majesty's Court of King's Bench, and especially to John Hester, gentleman."

Now take notice: As soon as Mr. Hester arrived in the island, and proceeded to arrest Mr. Le Retilley, the latter called in the aid of the Constable or Mayor of the town, who assisted him to resist the process, captured Mr. Hester, made him prisoner, and presented him before the Court, on a charge of having violated the peace, by executing an illegal warrant; where he was reprimanded, and threatened with severe pains and penalties for violating the privileges of the island! After this, a requisition was addressed to the Royal Court by the Tipstaff, for assistance to execute his process, when Mr. Le Retilley memorialized the Court for their protection against it, on which the Court delivered the following judgment:—

"Mr. John Hester, *huissier* (tipstaff) of the Court of King's Bench, having this day presented before the Court, a requisition on his part, accompanied by a warrant from Lord Tenterden, Chief Justice of England, demanding, in virtue of the said order or warrant, permission to seize the person of Thomas Le Retilley, Esq., King's Deputy Prevost, in order to take him to London, to answer before the said Judge for a pretended contempt of the said Court of King's Bench. The Royal Court, persuaded that the faith of this Judge has been imposed on as regards the order before mentioned, which is entirely contrary to the constitution of the island, and to the Royal Charters, by which 'no inhabitant can be taken out of the island against his will, by summons or otherwise, in any manner whatsoever,' has rejected and rejects, after hearing the conclusions of the Crown officers, the requisition of the said Hester."

Matters now took a serious turn, for the case was brought before the notice of Government, and a long correspondence ensued. The Guernsey authorities were called upon for an explanation of their conduct, when they grounded their resistance to the writ, on the allegation, that the Habeas Corpus Acts had never been transmitted to the island, and were unknown, and therefore had not force of law among them! In consequence of this, the Acts were transmitted to both islands, accompanied with Orders in Council, ordering them to be registered, not that the registration was essential, but that ignorance should no longer be their excuse.

[See Order in Council before mentioned.] Pending these negotiations. Mr. Capes petitioned the House of Commons for its interference: the petition was ordered to be printed, but an investigation of its merits was postponed, until the measures which government were taking, had been found inefficient. In these negotiations, the Guernsey Court represented the hardship they would suffer if the island should be burthened with the maintenance of paupers born of soldiers in garrison, and the inconveniences that would result if they were bound by laws which they were ignorant of having been passed. The Government thereupon provided for the future maintenance of the paupers, the authorities of the island foregoing their claim on Mr. Capes, for their past support, and they transmitted the Acts to Jersey and Guernsey. On or about the 5th June, 1832, Mr. Portman moved the House of Commons for a call of the house to address the King upon the violation of the liberty of the subject in the island of Guernsey. The authorities of the islands became alarmed: a deputation was sent from both Jersey and Guernsey to London, with a memorial to the Secretary of State for the Home Department, praying the suspension of the Acts in the islands, as being contrary to their Charters and Privileges, but his Lordship could afford them no relief. What passed at the interview never transpired, but it is understood that the authorities acquiesced to the order in Council, and promised obedience. At this juncture, the Under Secretary of State, in answer to a question from Mr. Hume, in the House of Commons, assured him "that the authorities of both islands, though reluctantly, had *consented to register* the habeas corpus Acts." The assurance however, thus given was not fulfilled, but nevertheless the Acts have force of law beyond all question, independent of the Order in Council which was not recalled, suspended, or repealed.

Halbardiers or Pikemen.—Their duty is precisely that of a Sheriff's Troop in England, but their appearance is far from being so respectable, as they are not required to wear any particular livery or uniform. The Sheriff uses his own discretion as to the number who may be summoned to attend each time. Anciently, before there was a prison at St. Helier, these halbardiers had to escort prisoners to and from Mount Orgueil Castle to the Court House, and that may account why they are all freeholders of the adjoining parishes of Grouville, St. Martin, and St. Saviour, who are responsible for the performance of that duty by their tenures. Grouville has 12, and St. Saviour 18 of those halberdiers, each of whom has, by his tenure, a

small allowance of land for his trouble. They are more numerous at St. Martin's, where every freeholder on the King's fee is liable to furnish a halberd. Their number occasionally varies at St. Martin's, but it may be averaged at from 100 to 120, which leaves a body of about 150 men at the disposal of the Sheriff for the keeping of the place.—[Durell.]

Harbour Dues.—See *Pier Dues*.

Harbour Masters are on the recommendation of the Committee of Piers appointed by the States for the term of three years. In the case of P. Bertram, in May, 1823, who was elected only until the end of the year, contrary both to law and custom, on his petition to the Privy Council, their Lordships having taken the petition into their consideration, ordered that a copy of the same should be transmitted to the States for them to answer, and that all further proceedings should be suspended in the matter. The States however met the 3rd Feb. following, when in defiance of the Order in Council, they elected Mr. Baudin, another candidate by a majority of 16 against 11. On this the President annexed his dissent at the bottom of the bill, remarking to the Assembly, that by the adoption of such a monstrous open act of disobedience, they had not only violated a positive law, but aimed a blow at the Royal Prerogative by electing Mr. Baudin instead of Mr. Bertram. [Bowditch's Treatise, p. 40.]

Hawkers and Pedlars.—No licence is required by Her Majesty's subjects, but foreigners must obtain permission of the Bailiff for which a trifling charge is made.

Heifers and Cows.—Persons landing Heifers or Cows from France without giving notice to the Harbour Master, are liable to a penalty of 1,000 *livres* for each contravention. In the case of the King v. Germain, defendant was brought before the Court, charged with having French cows in her possession; but on her asserting that one had been purchased at the market, and the other of a neighbour, the Court stopped the case and discharged her.

Highways.—The repairs of the public roads of the Island are by an Act of the States, dated the 18th April, 1812, managed by a Committee in each parish, composed of the Constable and three principal inhabitants, and with whom the States, the King's Officers, and the Greffier, have right to assist. The Constable with two others, are competent to act. Two Inspectors are also chosen for each Vingtaine. All these Officers are elected for three years, at Parish Meetings convened by the Constable by advertisements, the first or second weeks of Nov. and attend at Court to be sworn on notice from

Furniture, &c. at the Custom House where they embark, and pay the export duty thereon, ten shillings per cent., keeping a copy of such entry, &c., without which, their goods on being taken back, will be liable to be seized for the payment of the same duties, &c., as Foreign manufacture. Persons on returning to England with their furniture, are recommended to import it through the *same* Custom House as it was exported, to prevent delays and expences. Household Furniture of whatever description may be imported and exported both to and from the Channel Islands: if exported from Jersey to the Isle of Man, it pays a duty of 15 per cent. (advalorem) but if of the Manufacture of Jersey or of the United Kingdom accompanied with a certificate to that effect, it may be imported into any port in England, *duty free*, and then if re-shipped to the Isle of Man will be subject to a duty of 2½ per cent. Persons wishing to export from the Channel Islands to the Isle of Man *direct*, should memorialize the Lords of the Treasury to be allowed to do so, at the same duty as they would be liable to, from any port in Great Britain, and which has heretofore been granted by their Lordships.

Hue and Cry.—See *Pris de Corps*.

Husband and Wife.—By marriage the husband acquires no right in his wife's property, except her personal estate, but the wife acquires one third of the property, her husband possessed *before* marriage, both real and personal; and which she can hold and retain even to the prejudice of creditors, subject to the payment of one third of the debts he owed before marriage. *Liability of the wife's property for her husband's debts.* In *Roussel v. Le Riche et Uxor*, 1830. Plaintiff was holder of a joint obligation signed by both the defendants *not being separated as to property*. The husband had renounced in Feb. 1829, when he gave up all his property to his creditors, from whose claims upon him, he thereby obtained a discharge, and among the rest from the plaintiff upon the very security he was suing. Defendants therefore resisted the demand on the ground, that the husband could not be held responsible for the payment of that for which he had obtained a legal discharge. It was contended for Plaintiff, that it was necessary to include the husband in an action against the wife, who could not be sued separately. She was in possession of property now which the husband enjoyed the advantage of, and as they had not been separated *quant aux biens*, this property was liable for the payment of his demand, which was secured by the wife as well as the husband. It was contended for Defendant that the action could not be maintained in point of form, for the husband

having obtained his discharge from this very demand, it could not be again the subject of action. If such doctrine could be held good, it would follow as a consequence, that the husband must also go to prison with his wife for a debt from which he had already been legally discharged. The Court overruled the objection, and adjudged the defendant to plead to the merits.—*Liability of the wife for debt in certain cases.* It is generally supposed that a married woman is not legally answerable for debts, though contracted by herself, and even with a fraudulent intention, unless she has been separated from her husband *quant aux biens*; but in the case of Godfray, Gray and Co., v. Field and wife, 1837, an action to see confirmation of the arrest of the persons of defendants for payment of £26 5s. 5¹/₂d. for goods sold and delivered. On the pretension that Mrs. Field was under coverture, and therefore not liable, the Court overruled it, as the goods were sold on her exclusive responsibility she having produced certain documents to show, she possessed property in her own right, and confirmed the arrest.—*Liability of the husband for the wife's maintenance when living separate.* In the case of Hawkins v. Bellamy, 1838, defendant had been arrested for payment of £6 11s. 11d., for necessities furnished to his wife, the Court considering that though living apart they had not been separated *quant aux biens*, and as defendant had not allowed his wife any maintenance, confirmed the arrest.

Hussier, or Usher of the Court is appointed by the Bailiff: his duty is to attend every sitting of the tribunal and the States, to preserve order; and to deliver messages; he is also required to notify to the magistrates when it is their respective turns of attendance at Court. Salary £15 per annum.

Hypothèques et Privilèges.—Hypothèque is a kind of preference acquired by contract or judgment, and is totally independent of the nature of the debt; they rank according to their dates of registry. Privilege is a right of preference proceeding from the nature of the debt as house rent, funeral expences, and servants' wages, which are said to be privileged without reference to the period at which the debt was contracted. In *Guernsey*, a debt for medical attendance is also privileged. In the case of *Le Breton v. Ennis*, an action to recover damages, laid at £2,000, plaintiff immediately hypothecated defendant's property to secure satisfaction of the judgment, on which the latter interjected a Remonstrance claiming that the hypothecation should be erased and annulled, the Court (1839) by the casting vote of the Bailiff De Veulle, overruled the demand, and held that the plaintiff

had an incontestable right to register his claim, and thus obtain a mortgage on defendant's property *before* judgment.

Impost—Persons who come to settle here either as Publicans or Vendors of Wines and Spirits, should take care that the Impost or duties have been paid, on the goods they import, otherwise they are liable to be seized and the owner fined. The Impost amounts to about £11,000 per annum, the agents, for collecting which, formerly received a commission of 4 per cent, but now, the principal, receives £120; and the assistant £80, per annum. French Wines, pay a duty of £1 per hhd.; others £1 5s. Spirits 1s. per gal., in bottle 1s. per doz. In the case of John Joseph Callipelle, Master of the *Jean Baptiste*, who was sued by the Attorney General, to pay the fine for having on two occasions landed, the first time six and the second four dozen of Wine in bottles, without having declared the importation to the Agents for duties on Wines and Spirits, the Court considering that Callipelle had landed the wine with the full intention of defrauding the Revenue, levied the maximum of the penalty; and fined him £15 and costs.

Impost, authority for levying.—See *Revenue*.

Impress Act has had no force in the Islands.

Imprisonment.—Any person whether a ministerial officer of the Court, or a police officer, who arrests a party is bound to produce the body of the person within 40 hours of the capture, or at latest, at the first meeting of the Court; and if he fail, the party may apply by petition or otherwise to the Court, who is bound in either case to take the matter into consideration to discharge the prisoner, admit him to bail, remand him for further examination, or commit him to take his trial. [See Memorial of the Deputies to the Secretary of the State against the registering of the Habeas Corpus Acts.] Whatever the officer or the Court may be *bound* to do, it is notorious that the practice is not followed. Indeed, at the very time the Bailiff and other Deputies memorialized against the Habeas Corpus acts, some flagrant violations of it then existed. The Bailiff had visited the prison, and after minute inquiries as to the state and treatment of the unfortunate inmates below the bars, ascertained that four persons were there, who had been confined for years, on charges of drunkenness and disorderly conduct, and others who had been committed and suffered to remain without having been brought before the Court. He severely censured the illegal practice, and gave directions that in *future*, prisoners should be taken before him or some Jurat the morning after their committal, and even the same day if

the time of the commission of the offence admitted of it. [*News*, July 27, 1832.] Those directions, however, have never been followed up. The Editor remarks, "We have since made it our duty to inquire a little further into these matters, and we find that two out of the four prisoners alluded to, were soon after the Bailiff's visit discharged. But there remains incarcerated at this moment two whose cases demand instant and strict investigation. Those persons have been there for periods of five and seven years supported on weekly allowances from relatives probably interested in their perpetual confinement." These cases occurred at the very time when the above representation was made. And constant experience since has proved that it often happens that prisoners are discharged by the Court on the ground of their long incarceration before trial. Take the following case for example: Elizabeth Vavian was committed to prison in Oct. for an alleged assault, but was not presented until the 29th December, when the Court, considering the length of time she had been incarcerated discharged her with a reprimand.

Imprisonment for Debt, Abolition Act, (1 and 2 Vict. cap. 110) does not extend to the relief of persons incarcerated for debt in the Channel Islands; but it affects every description of property here, or "in any of her Majesty's dominions, plantations or Colonies," belonging to those debtors who may be brought within the operation of the Statute; even that of aliens, denizens and women. And inasmuch as there is no exception made in favour of persons actually domiciled in Jersey or Guernsey, or other countries beyond the jurisdiction of the English Courts, every such person is liable to arrest for debt or damage, if amounting of £20 or upwards, when on a temporary visit to the mother country, and this upon the affidavit of a creditor or other person, that the said party is about to *quit England*, although it should be only to return to his home. The 3rd clause of the Statute enacts:—"That if a plaintiff in any action in any of Her Majesty's superior Courts of Law at Westminster, in which the defendant is now liable to arrest, whether upon the order of a Judge, or without such order, shall, by the affidavit of himself or of some other person, show, to the satisfaction of a judge of one of the superior Courts, that such plaintiff has a cause of action against the defendant or defendants to the amount of twenty pounds or upwards, or has sustained damage to that amount, and that there is probable cause for believing that the defendant or any one, or more of the defendants is or are about to quit England, shall be held to bail for such sum as such judge shall think fit, not exceeding the amount of the debt or damages."

Incest is unknown to the law, but not to the practice of the Court. In the *King v. Beaugie*, defendant the son of a respectable family in Jersey, and in easy circumstances, was indicted by an Act of the Royal Court for incest with his daughters-in-law. At the time of the committal of the offence, there was no law to meet it, but whether the party was criminal or not, it formed no excuse for the pillage which followed this man's conviction, which ran thus:—"After which the said Thomas John Beaugie having submitted to Justice, the Court conformably to the conclusions of the said King's Attorney-General, have condemned the said Thomas John Beaugie to an imprisonment of six months, of which the last eight days shall be on bread and water, to a penalty of fifty pounds sterling to his Majesty, and after the expiration of the said imprisonment to be banished from this island for the term of five years, under pain of a severer punishment in the event of returning before the expiration of the said term. FRAS. GODFRAY, Greffier." Not a month elapsed, from the passing of this sentence, when the prisoner's goods and furniture were seized and sold by the direction of the Royal Court, to meet the fine, and the expense of the prosecution, which together amounted to £76. Here follows the receipt for the money: "By the net produce of the sale of your furniture according to account. Received sixteen pounds sterling, for balance of account as above. For the Attorney-General, JN. MOURANT." The defendant presented a doleance to his Majesty in Council at the time Lord Gifford was President, complaining that credit had not been given for several items sold at the sale, who regretted, *that as the law then stood*, there was no appeal from the decisions of the Law Courts in Jersey in criminal matters. [Bowditch's Treatise, p. 64.]

Infanticide.—In *England* if a woman indicted for the murder of her child be acquitted, the Jury by whom she is tried may find, provided it so appear in evidence, that she was delivered of a child, and that by secreting the dead body she endeavoured to *conceal the birth*; upon which the Court may pass sentence as if she had been convicted of the misdemeanour of concealing the birth. In *Jersey* however the practice is different. In the case of Amelia Spencer, a servant girl, indicted in 1839, for the wilful murder of her infant child, having delivered herself and secreted the child in the locker of her bed-room where it was found dead; although it was proved in evidence that the child was born alive, that the girl delivered herself, and immediately afterwards pursued her domestic work, the Jury first brought in a verdict of Involun-

tary homicide, but inasmuch as the verdict was objected to by the Court, they amended it, and returned, *Excusable Homicide* ! The prisoner was immediately discharged.

Inheritance, partition of.—In the Code of 1771, it is said that in the partition of country inheritances, should there be a house upon the estate, the eldest child, whether male or female,* in direct succession, is to have the house, with its appurtenances ; together with thirty perches of ground, for a kitchen garden ; and should there not be above four *vergées* more, the said eldest to take the whole : if there should be a greater quantity, the said eldest to have the first choice of four *vergées*, and afterwards, of the tenth *verge* of what may remain. He has also other privileges, in order to enable him to pay the rents due on the estate ; after these have been arranged, the remainder of the property, whether consisting of houses, lands, or rents, to be divided between the said eldest, and the other inheritors, *according to the ancient custom and practice of the Island* :† but should there not be any house belonging to the inheritance, or if one, should it be situated in either of the towns of St. Helier, or St. Aubin, the said eldest, in this case, to have, besides the house so situated, only the tenth *verge* of land for his birth-right, together with a tenth part of the neat rents.‡ According to the ancient custom of Normandy,

* This does not seem to be clearly expressed : the female has this preference only when there is no male child.

† According to this statement, it would appear, that all the property, excepting that which belongs specifically to the eldest, is to be divided equally between the other claimants : this however is not the case : after the eldest son has been satisfied, in respect of his primogeniture, the residue is to be divided thus : two thirds among the males, including the eldest, who now shares with the younger sons ; and only one third between all the daughters, how numerous soever. Nor must the portion of any daughter exceed that of the youngest son ; so that in a family, consisting of ten children, there should be five or six daughters, the respective portion of each daughter would, probably, be a mere trifle.

‡ This does not seem consistent with the general intention, of giving a considerable preference to the eldest son ; because, should there not be a house on the estate the eldest son is not to possess any more land, as his birth right, then if there should be one in either of the towns, where, it may be presumed, that a house must be more valuable than one in the country.

the inheritors in choosing, are to consult the convenience of each other; and are not to dismember or divide any part unless the partition cannot otherwise be equally arranged. None of the younger inheritors, nor their representatives, cannot raise any pretension to a division, should the claim have remained unnoticed more than forty years. In each parish, six appraisers are to be appointed, at the parish meeting, whose business is to value the lands that are to be divided.

Initiating Laws.—It would appear by an Order in Council, dated June 28, 1830, which levied a penalty of two pounds, (without the concurrence of the States) on those members who should unlawfully absent themselves, that her Majesty has the prerogative of Initiating Laws for the island. The States petitioned against this order, which they considered an encroachment on their rights, but subsequently conceded the point, and amended their Petition!

Injunction, writ of, may be obtained from the Civil Court to restrain the proceedings of the Ecclesiastical Court on the grounds of want of jurisdiction, as was done at the instance of the Rev. Ed. Durell, in 1838.

Injuries to and trespasses on real property.—With respect to trespasses and other injuries to real property, these also are local by our law, so that it is said that no action can be maintained in England, for an injury to real property out of the kingdom, as for instance, for entering a house in Canada. [Chitty on Commerce, vol. 1, n. 648. The contrary was stated by Lord Mansfield in *Mostyn v. Fabrigas*, Cowp, 176—180; but that part of that case was expressly overruled in *Doulson v. Matthews*, 4 Term Rep. 503.] A bill in equity for the delivery in possession of lands in the colonies may be maintained, for though lands in the plantations are not under the jurisdiction of the Court of Chancery, yet if the parties are in this country, that court, acting *in personam*, will enforce the delivery. A bill to account for the rents of lands in the colonies may be supported. And a court of equity in England may enforce the specific performance of a contract relating to such lands. [Roberdeau v. Rous, 1 Atk. 544; S. P. *Foster v. Vassal*, 3 Atk. 589; *Penn. v. Lord Baltimore*, 1 Ves. 444; *White v. Hall*, 12 Ves. 321; *Jackson v. Petrie*, 10 Ves. 165.] But where the question upon the construction of the contract for a security by way of mortgage had been before a court of competent jurisdiction in the colony, and a foreclosure and sale directed, and certain allegations of fraud were merely general, and denied, an injunction was refused in the Court of Chan-

cery in England, on the ground of want of jurisdiction. [4 White v. Hall, 12 Ves. 321.] The motion for the injunction there, was, in effect, an appeal from a court of competent jurisdiction in the colony (Demerara) to the Chancery here, and no such appeal would lie. Sir R. Romilly (Solicitor-General) and Mr. Bell, in arguing against the injunction, said, "It is not contended that this court has not jurisdiction over contracts relating to possessions in this particular case, a court of competent jurisdiction having already decided."

Injuries, personal, sustained abroad.—As to personal injuries and breaches of contract, they are transitory in their nature, and for these, though they take place abroad, actions may be maintained in the courts of this country. [5 Mostyn v. Fabrigas, Cowp. 161, 162; 2 Sir W. Black. 929, S. C.; 11 Harg. State Trials, S. C.; Cooke v. Maxwell, 2 Stark. 183; Wey v. Yally, 6 Mod. 195; Lord Bellamont's case, 2 Salk. 625. See 42 Geo. 3, c. 85, s. 6. And it is said that the Court of King's Bench has jurisdiction to send a habeas corpus to the plantations. [6 Rex v. Cowle, 2 Burr. 856; Stokes' Law of Colonies, 5, 6. [Clarke's Colonial Law, p. 83.]

Inquests in sudden and accidental deaths are held on a mandamus from the Chief Magistrate, by the *Vicomte* and 12 Jurors, who are summoned by him; whoever he chooses for the service is compelled to attend, but each person can demand 2s. 6d. for his time. British residents are liable to serve on Coroner's Inquests, and if they refuse, on the plea of not knowing the French language, are liable to a penalty. Both Law and custom require that the body should be left in the place or as near to it as possible to be in safety, where it was first found, until after the holding of the inquest; consequently the coroner is obliged to investigate the case in the open air, without the solemnity and convenience of forming a court in a room where he can take down the evidence in writing, and if not satisfactory at the time he adjourns the court, until fresh evidence is obtained.

Insolvency.—The following case will elucidate the method usually adopted in Jersey to bring about a bankruptcy, to victimize both debtor and creditors. A, is worth in landed property and rents, or mortgages thereon, 120 quarters, equal to £2000, in cash £600, and in furniture and other effects, £400, making a total of £3,000. With this capital he starts into business, using his £600. He purchases goods to the amount of £1,200, paying down one-half and giving his bills at different dates for the other. He goes on prosperously for two or three years, and in the course of that time, his book debts

amount to £600, equal to his original cash. But, owing to the tardiness of the law, and the expence thereof, he finds himself unable to convert these debts into money, and therefore at the pressure of the moment, resorts to the expedient of borrowing £200 of B, and £400 of C, at interest, giving his bonds for the same, and consenting for judgments to be entered up against him, by *acte de reconnaissance* ; first in favour of B, and secondly in favour of C, which judgments are registered against his property at the Registrar's Office, in the *Livre des Obligations*, and consequently have a preference from the date thereof. A, now goes on comfortably again, but at the end of five years, owing to the increase of dead stock, and the accumulation of debts, the first to £800, and the latter to £1000, he finds himself unable to meet three of his bills, the first £100 due to C, holder of the judgment bond for £400 ; the second £60 due to D ; and the third £40, running due to E ; total £200. Now then for the scheme how to plunder the estate. C arrests A for payment of the £100 bill ; A gives bail for his appearance at Court on the day assigned by the Sheriff, to see the caption confirmed. The bail and bailed attend, but as a matter of course some circumstance occurs which prevents the cause from being called, on which the officer summons them for another day. By an accident or misunderstanding, the parties do not appear, or perhaps not in sufficient time ; the cause is then called, perhaps at the very moment the Court is opened, when just as judgment by default is about to be given, up starts D, holder of the £60 bill, (who has by a previous arrangement with C, been promised payment if he would give a helping hand in the matter) and declares the estate *en desastre* (in state of insolvency) under the plausible pretext of saving the rights of other creditors, especially those whose claims are founded on simple contract : because (says he) if the judgment should be registered ten clear days before a *desastre* be declared, it will be entitled to a preference. C, stoutly exclaims against this proceeding, (though working all the while for his benefit) and thereupon fixes the *bail*, for not producing A when the cause was called, and gets a judgment against him which is registered immediately, so that, in ten days from that time, he acquires a preference against *his* property. This is the first act, now for the second. C moves the Court that the *desastre* be opened for a fortnight—the time usually allowed—for all creditors to come in and file their claims by attachment, and also that the Viscount or his Deputy be authorized to sequester all the personal estate, books of account, documents, &c., for the

benefit of creditors. The Court grants the demand, and the record is published or read by the Officer under the Statue in the Royal-Square, for which he receives ten shillings stg., and is also posted at the door of the Court-house in the *French* language, in order that *all* creditors living in the Island, may have knowledge of the proceedings. But no notice is sent to the absentees ! By this apparently honest measure, so ably preconcerted betwixt C and D, and so successfully brought thus far, the former of which has a handsome speculation in view by making himself *Tenant* to the estate, and plundering the other creditors, and the latter the promise of his claim being paid, if not of a share in the spoil, A becomes paralyzed, and is absolutely deprived of the administration of his affairs. During the fortnight he endeavours to effect a compromise with those on the spot, because his English creditors are ignorant of what is going on. Those of the Jersey creditors, whose claims are founded on simple contract, not having a preference, offer amicable terms, and the others create an obstacle in the person of an absentee, on whom they throw the blame of non-compliance ! C. and D. who have now found out who A's. absent creditors are, get a Solicitor to address a letter to one of them, stating the case, smypathizing for A, and urging the expediency of prompt measures ; on which as a matter of course, a power of Attorney is transmitted to him, to act for the firm. Now mark ! this has been done not to protect the rights of an absentee whose claim *not* being a judgment one, is literally good for nothing, but rather for the purpose of screwing up the concern, and driving on the contemplated bankruptcy ! The Solicitor now interferences, and says he has positive instructions not to compromise with A, excepting it be as regards time, and he shall give good and available securities for payment in full. This acts a stopper to the proposed compromise, and facilitates the object which C and D have in view. Thus ends the second act. The fortnight having elapsed, A has now no alternative but to appear before the Court with a true and faithful statement of his affairs, and to ask leave to place his property in the hands of Justice, in order to obtain a respite of a year and a day. He being really solvent, it is granted ; but observe, the only benefit he derives from it is subsistence for his family out of the estate during that period. As for recovering the debts owing to him he finds it impossible, nor can he sell any part of his landed property, for nobody will purchase it on the eve of a bankruptcy, lest they should be ousted by the décret. Besides, the trustee judges will not allow him to alienate any part of

his property, unless the *whole* of his creditors shall consent thereto—which of course is always prevented. During the year and a day, A calls several meetings of his creditors, in the lingering hope of coming to a compromise: perhaps the greater part, who by this time have become acquainted with his situation, attend, either personally or by their agents, when all are disposed to make an arrangement excepting those interested in the Bankruptcy. They shun the meeting and blame the absentee, and therefore no adjustment takes place. Just as the year and a day is about to expire, A makes one more effort, and calls another meeting, when C, who was supposed to be well secured for his £400, by a real property worth £2,000, subject only to the mortgage of B for £200, and who all along absented himself, now makes his appearance, and declares that he must have his judgment-bond paid, as he cannot allow his money to remain out any longer. That is the finishing stroke! all chance of a compromise is now at an end, and this brings us to the close of the third act. As soon as the year and a day is up, C instigates D to go before the Court, and declare that A has not discharged his claim within the time allowed by law, and moves the bench, that in pursuance of the oath administered to the Insolvent, his property be now adjudged in *decret*, or renounced for the benefit of creditors, which as a matter of course is granted and an attorney is appointed to work the same. [See *Bankrupt laws of Jersey, administration and division of Bankrupt's estate.*] The result is that A's creditors are compelled to abandon their claims, and the unfortunate bail among the rest. D, who is secretly secured, abandons his claim also, and then comes C, with his judgment bond of £400, who declares himself *tenant* to the estate: by which he takes everything subject only to the payment of B's £200, and the expences of working the Bankruptcy, which is from £40 to £50, according to the number of claimants there may be, and the £60 which he has promised to pay C, for his connivance to and assistance in the matter. Thus the unfortunate A whose estate was worth forty or sixty shillings in the pound is plundered of the whole of his property, and the creditors of all participation in the same. C grasps a property worth £4,200, for about £750, by which he realizes a profit little short of £3,500. This a faithful picture and one founded on actual experience.

Insolvent Acts.—The English Acts do not extend for the relief of Debtors imprisoned in Jersey or Guernsey, but the assignment under the acts, reaches an Insolvent's estate

situated in the Islands, and the certificate of the Court is a discharge to all debts due or claimed to be due at the time of filing the Petition, even though they had been contracted in the Islands.

Insolvent's Certificate.—Formerly the Jersey Court held that a certificate of Bankruptcy granted by an English or Foreign Court was no bar to an action in this Island for a debt contracted previous to the bankruptcy. The case of *Moisson v. Quelin* was decided upon this principle. It was an action brought by power of attorney to recover a sum of money due from the defendant.—The first objection taken by the defendant's Counsel was the competency of the Court; the transaction having originated in France, where the defendant had become a bankrupt, the Courts of another country could not interfere. For the defence, also, some French authorities were quoted; also Mayor's Notaries, and other certificates worthy of faith and credit, to show that the bankrupt had regularly submitted to the laws of his country. The Royal Court paid no attention to these authenticated documents, and condemned the defendant to the debt and costs. [Bowditch's Treatise, p. 61.]

This judgment having been reversed by the Privy Council, the Jersey Court has since admitted a Certificate of Bankruptcy or Insolvency as a bar to an action. Take the case of *Billing v. Gartrell*, in 1838, which is the last of that nature. It was an action to recover £11 7s. 6d. British sterling, amount of a bill drawn at two months, dated 11 Jan. 1833, accepted by the Defendant payable at Messrs. Lubbock and Co., bankers, London; and protested for non-payment. At the time the original debt was contracted, both plaintiff and defendant were living at Plymouth, but subsequently the latter lived at Library-Place, in the town of St. Helier, Jersey, where he carried on the business of an ironmonger. Defendant went to England, and whilst there was arrested at the suit of one of his creditors: being unable to satisfy the debt, he surrendered to prison, in Jan. 1835; and after remaining in custody a certain time prescribed by law, he filed a petition to the Insolvent Court for relief, under the Statute called the Insolvent Debtor's Act, 7 George 4, c. 57, and also a schedule setting forth all the debts he then owed, *amongst which was the plaintiff's* and the nature of his assets. On filing his petition and in pursuance of the Statute, he executed a conveyance and assignment of all his estate and effects, both within the realm and *abroad*, without exception to the *provisional assignees* of the said Court, on certain conditions and stipulations set forth in the Act, *in trust* for the benefit of his then creditors, and also a warrant of

Attorney to confess judgment for the amount of the said debts, so that execution under the same might be issued and levied on his estate and effects, when sufficient cause should be shown to the Insolvent Court for that purpose. The defendant having been heard on his petition before one of the Commissioners of the said Court, at Exeter, on the 9th of March, 1835, he was declared and adjudged entitled to his *discharge from the several debts due or claimed to be due from him at the time of filing his petition*, and was discharged accordingly. After awhile, defendant returned to this Island, where he had since carried on the business of a Broker, and on the 30th of May, his stock in trade and other effects, were seized by the Officer of Justice, in virtue of a process issuing out of the *Jersey Court*, at the suit of the plaintiff, as an *individual creditor*, for payment of the debt aforesaid, to which the defendant's *adjudication had extended*, and he was summoned before the Magistrates, to show cause why the said seizure should not be confirmed, and his goods sold, before the Sheriff, to satisfy the debt, according to the custom of this Island." The following was the judgment of the Court :—

"The year one thousand eight hundred and thirty eight, the sixteenth day of June. On the action instituted against Mr. John Gartrell and Mr. Philip De Ste. Croix, who has remained security for the judgment against the said Gartrell by Mr. William Henry Billing, to pay him a certain note of hand or bill of exchange, drawn by the said Mr. Billing, the year 1833, the 11th day of January, payable to his order, at two months after date, on the said John Gartrell for the sum of eleven pounds, seven shillings and six pence, stg., according to the course of Exchange on London, and accepted by the said Gartrell, payable at Messrs. J. Lubbock & Co., Bankers, London, which note of hand or Bill of Exchange, has been protested for non-payment. Item, to pay him the expenses of protest, interests and damages, incurred and to be incurred thereon. And also to hear the record of the Officer. On the calling of the cause, Frs. Godfray, esq., Advocate, declared that he was charged to plead the cause of the Plaintiff. (1) On the pretension of defendant, that the Court is incompetent to entertain this cause, (2) and that the plaintiff has no right of action against him, the said defendant having, on the 9th March, 1835, taken the benefit of the Insolvent Act in England, and the said defendant, having produced in support of his pretension, the said Act (3) as also a copy of the schedule which he then delivered and in which schedule the note of hand claimed by the Plaintiff is entered—and on the pretension of the Plaintiff that the

document produced by the said Gartrell is not authentic, and cannot be received in this Court, but that even were it duly authenticated, it would not liberate the defendant excepting from the arrest of his person, and not from an arrest on his effects, and on his demand, that the said defendants be adjudged to the claim and expenses. Considering that the defendant is domiciled in this country and carries on a trade. (4) That admitting he had been allowed to take the benefit of the Insolvent Act, he is not at all liberated from the payment of his debts and can be actioned for that purpose by persons duly authorized (5) in virtue of the said Act of Parliament, (6) not only in England but elsewhere. The Court have declared themselves competent—and as regards the merits, considering that the Act produced by defendant (7) is duly authenticated, and that by this Act, it is stated that the defendant has been admitted to take the benefit of the Insolvent Act; and that the schedule which accompanies this document contains the debt which the plaintiff at present claims payment of. Considering that although the property of the said defendant can be applied to the liquidation of his debts at the instance of persons legally authorized, (8) in virtue of the Act of Parliament precited, the right of action does not belong to his creditors individually. The Court has overruled the pretension of plaintiff, and discharged defendant from the action. From which decision the Plaintiff is allowed to appeal before a greater number. And considering the said appeal the defendant is allowed to protest against all losses, prejudices, interests, damages and delays. “CHAS. DE STE. CROIX, Commis-au-Greffé.”
—The appeal was never prosecuted.

The following notes are taken from the *News*, in which the case was reported:—

(1) Well, what of that? Nobody denied it: the question mooted was, who was the representative of, and responsible for, the Plaintiff, for costs and damages. if Defendant should be discharged from the action, seeing that the Plaintiff was living out of the Jurisdiction? The question was cautiously evaded.

(2) This is a silly pretension, because it does not allege a single reason *why* the Court should be deemed incompetent.

(3) That is wrong: it was not the Act, but the *Certificate* that he had conformed to the Act.

(4) What in the world can this have to do with the question?

(5) That is downright nonsense. The insolvent having executed a Warrant of Attorney to confess judgment for the amount of the debt, before one of the superior Courts, *judg-*

ment against him was already recovered ; consequently there were no grounds for another action *de novo*.

(6) It is not by virtue of the Act of Parliament, but by that of the conveyance and assignment.

(7) It was not the Act, but his *Certificate*.

(8) Certainly, but not until his new creditors have been paid in full.

Inspectors for the repairs of the public Roads.—Two are named by the parish assembly every three years, for each *Vingtaine* ; they receive no pay, but are exempted from other personal service for the repairs of the roads. Members of the States and Centeniers are exempted from this duty. They take the following oath :—“ You promise and swear by the faith and oath that you owe to God, that well and faithfully you will discharge the office of Inspector for the repair of the public roads in the *Vingtaine* of in the parish of and that you will follow and put in due execution, the regulations made for the repairs and keeping of the roads, and generally will perform all the duties belonging to the said office.”

Insurance, Life Policy, how vitiated.—Nearly all the Insurance Companies have a clause in their Policies, providing if the assured should enter into any Military or Naval service whatever, that the said Policies shall become null and void ; and as no exception is made in favour of the militia duty, which every male inhabitant of the Channel Islands is bound by law to perform, from the age of 15 to 65 ; it necessarily follows, if the assured should die in consequence of any wound or other injury received by violence, whilst discharging such duty, that the claim on the Company would not be satisfied. To avoid this, the assured should have a special undertaking from the Directors, accepting the said risk, and which should be endorsed on the Policy.

Insurance, Policy, assignment of.—The case of Messrs. De La Taste and Co., v. Benest, Agent for the Royal Exchange Assurance Company, will bear on this subject : A Mr. Richard Rhodes had insured his life in the Royal Exchange, for £300, and had regularly paid the premium until the year 1825, when he being indebted to Messrs. De La Taste and Co., assigned the policy to them as “ a collateral security for any sum of money he then owed them, or might owe them, with a provision that in case of his death, they were first to repay themselves the sum due to them, and pay over the surplus to his widow.” This assignment was witnessed by Mr. Benest, the Agent in Jersey for the Assurance Company. These facts

were not denied, nor was the liability of the office to pay the sum of £300, disputed; but the widow having administered to the personal estate of the deceased Mr. Rhodes, had claimed the £300 from the office in London; and Messrs. De La Taste and Co. holding the policy for a valuable consideration, had also claimed the £300 in London. The answer of the office was this, "we are ready to pay it to either, if you can settle between yourselves who is to receive it—or if either of you will indemnify us against the claims of the other, we will pay it to the party so securing us; but if you both urge your claims at the same time, we must, in order to secure ourselves, obtain leave to pay it into the Court of Chancery, subject to the result of the disputed claim, and then you may fight it out." Under these circumstances it came to a hearing in Jersey, the King's Procureur, for Defendant, denied the competency of the Court, the policy having issued in London, the party insured having died in London, the widow having administered in London, and even plaintiffs, themselves having already made their claim in London, where the liability was. The King's Advocate for Plaintiffs maintained the competency of the Court, as the transaction, which created the interest in the policy, took place here: it was recognized by the Defendant, as the Agent of the Company here, being a witness to it, and by having since applied to them for the payment of the premium as it became due. He instanced several cases to shew the competency of the Court. The Court decided on its competency. The King's Procureur then avowed the readiness of the office to pay the money, if the Plaintiffs would secure them against the claims of the Administratrix. The King's Advocate rejected this offer; his client, by the assignment of the Policy from Mr. Rhodes, became entitled to receive the whole sum in trust, 1^o. to pay whatever sum might appear to be due to themselves, and 2^o. to apply the surplus, if any, to the use of the widow. But in point of fact there would be no surplus, for the original debt had been so increased by subsequent payments to and for Mr. Rhodes, as to come to upwards of £300. and if they had not continued to pay the premium, they would have lost the whole; as it was, after receiving this £300. they would still lose £30. or £40. The Court decided for the Plaintiffs, they giving security to the office against the claims of the other party.

Interest of Money.—Conformably to an ordinance established by an act of the Court of Héritage, the 23rd Sept. 1714, the interest of money shall not exceed 5 per cent, upon pain of being reputed usurious, and those contravening shall be punish-

ed accordingly.—*Code*, 1771. Simple contract debts bear no interest until after judgment has been given. Special debts such as Bills of Exchange and Promissory notes after they have been protested, or even noted, carry interest, unless they were made payable in *Guernsey*, where no interest is allowed. Bills and other obligations dated *previous* to Sept. 1, 1834, though for Jersey currency, will by an act of the States, of April 7, 1834, carry interest in British Sterling.

Interest not recoverable on a foreign Judgment.—The plaintiff is not entitled to interest in an action instituted in England on a foreign judgment, *Atkinson v. Brasbrook* (Lord) 4 Camp. 380—*Ellenborough*. On an action of debt instituted in England on a foreign judgment, for a entire sum recovered on counts for the balance of a merchant's account, for goods sold, monies advanced and paid monies due on bills of exchange, and for interest, the Court of Exchequer will not give interest, on affirmance of the judgment of the Court below. *Doran v. O'Reilly* 3 Price, 250 : S. C. nom. *Anon* 7 Taunt, 244.

Intervention.—When the intervention of a third party by remonstrance is refused, it is not usual for the Court to make an act of the same.

Intestates, distribution of their Estate.—According to what *Law*.—Personal property, follows the person of the owner, and in case of his decease intestate, must go according to the law of the country where he had his domicile, the actual locus of the goods having no influence. *Bruce v. Bruce*, 2 B. and P. 229 n.; *Burns v. Coles*, Amb. 415 : S. P. *Piper, v. Piper*, Amb. 26 ; *Somerville v. Somerville* (Lord), 5 Ves. jun. 750. And see *Nevinson v. Stables*, 4 Russ. 210. Therefore where a native of Scotland went to India in the Military service of the company and died there, it was held that his property must be distributed according to the law of England which prevailed in India, and where at the time of his death he domiciled.—*Id.* Otherwise, if he had gone to India in the King's service, or for any temporary purpose.—*Id.* Prima facie, the place of residence is the place of domicile, but they may be rebutted or supported by circumstances. *Bempde v. Johnstone*, 3. Ves. jun. 198. An acquired domicile is not lost by mere abandonment, but continues until a subsequent domicile is acquired, which can only be *animo et facto*, unless the party die in itinere toward an intended domicile. *Monroe v. Douglas*, 5 Madd. 379. Real property is regulated by the law of the country where the land lies. *Brodie v. Barry*, 2 Ves. and B. 131 : S. P. *Elliott v. Minto* (Lord) Madd. 16. An intestate, domiciled in England, leaving a real estate in Scotland, the heir being one of the

next of kin entitled to share according to the law of England is not subject to the condition of collating the real estate according to the law of Scotland.—*Id.* A native of Scotland domiciled in England having personal property only, executed during a visit to Scotland, and deposited there, a will prepared in the Scotch form, and died in England :—Held, that the will was to be construed according to the English Law. *Austruther v. Chalmer*, 2 Sim. 1. T. P., a native of England, domiciled in Guernsey, dies intestate, leaving a widow and infant children by her, and also by a former wife. The widow after his death, is appointed guardian of the children by the Royal Court of Guernsey, and in conjunction with a former marriage, sells the property of the intestate, and invests the produce in the English funds, after which she comes to England with her children, and is domiciled here. On the death of some of the children under age, a question arises whether their shares of the property have become distributable according to the law of England or Guernsey : and it was held that the law of England was to govern the succession, the domicile of the children being (according to the opinion of foreign jurists, our own law being silent on the subject) to follow the domicile of the surviving mother, where no fraudulent intention can be imputed. But fraud may be presumed, where no reasonable cause appears for the removal. *Pottinger v. Wightman*, 3 Mer. 67.

Intestates, personal property, how distributed in Jersey.—A wife is entitled at the death of her husband to half of his personal property, if he leaves no children ; the other half going to the next of kin ; but only to one third if there should be issue, the other two thirds, going to the heirs. The personal property of intestates is divided equally where there are only sons, or only daughters ; but when there are both, the sons are entitled to two thirds and the daughters share the remainder. In all collateral successions the real and unbequeathed personal property lapses to the nearest relatives *per capite*, and not *per stirps* ; and to the males in exclusion of the females, in the same degree of relationship. If the widow finds her husband's personal estate encumbered, she may within forty days after his decease, come into open Court and publicly renounce to the third of his personalty. To avoid exposure, it is practised, that the widow has by private contract, before two Jurats, passed her third of the personal estate to the heirs, who have covenanted to let her have her paraphernalia, and acquit her of all the debts : but if the whole estate fall short of clearing them, such contract would not serve the widow to

plead against the creditors, but she would still be liable ; but if she renounce, then is she freed. Formerly she lost the third of all estates purchased by her husband during coverture, and the profits of such estates as had been purchased for both their lives ; but notwithstanding a renunciation, she is entitled to her *præter dolem*, or provision *de la robe* ; these were anciently such jewels, clothes, &c., as were at the time of her marriage reserved to her, and an inventory having, at that time, been made and signed by the husband. In the present day, the widow is also allowed a bed, linen, and all other household stuff, not exceeding a third. [Bowditch's Treatise.]

Inventory, benefit of, usually called *Benefice d'Inventaire*. This is a process instituted by the heir at law, to ascertain the solvency of a person deceased, before he takes to the succession, so that he might not become personally liable for the debts unless there are sufficient assets to cover him, which he would be, if he accepted the administration of the deceased's property, and it should turn out that he died insolvent. The process does not lead to the discovery of the assets, nor of debtors to the estate, but only of the claimants, and hardly that. It may be very properly called a *refining* process, by which all absentee creditors of the estate or non claimants are barred from their right of recovery. The mode adopted is as follows : the heir at law moves the Court for leave for the Viscount or his Deputy to hold an inquisition on the property of the deceased, which on being granted, that officer gives notice in the *French* newspapers only, published on the Saturday following, that on a certain day, he will hold his *first* inquiry at the domicile of the deceased, and after that of the second, third and fourth. On those days all claimants are required to appear either in person or otherwise, to present a statement of their demands, and in default thereof, on or before the last day, are *excluded from all right of recovery against the succession* ! By this manoeuvre creditors living in England and elsewhere, not represented by an agent at the said inquiry, are shut out altogether, there being no provision made by law or custom to protect the rights of absentees, nor is it necessary to send them any notice whatever, by letter or otherwise. The officer having made out his inventory of the assets and claims, makes a record of the same, which is certified under his hand and returned into Court, where the heirs at law are summoned to appear, to accept or reject the succession, each in his turn according to precedency. If no one accepts the administration, a creditor may sue for a decret, the result of which is, that the property is adjudicated by a decree in *one*

lot to such *one* creditor, as shall have the right to declare himself Tenant to the same ; but mark, not for the benefit of the whole of the creditors, and to be divided rateably, but only for himself and such *prior* creditors as had taken the precaution to have there claims registered in the book of hypothecations and bonds at the Registrar's office.—[See *Bankrupt laws of Jersey, administration and division of Bankrupt's estate.*] If an heir at law should through misrepresentation of the state of the succession, renounce thereto, and afterwards should discover assets which he was not aware of, he is barred from succeeding to the property, and it goes to the next of kin.

The following statement will explain the practice of the Court on taking or accepting the administration of property. "After the death of my late Mother, Mr. Hugh Godfray, the Denunciateur, called in the discharge of his official duty, to make an inventory of her property ; Knowing that my Mother was indebted scarcely to any one, and that her Estate was perfectly solvent, I objected to this inventory being taken on the ground, of it being an unnecessary expence ; not imagining at the time that my refusal of this proceeding, would lead to any injurious consequences. I should here state that my Mother left four children, myself (her only son), and three daughters, who are married. Soon after my refusal to have the inventory taken, I and my brothers in law, were summoned to the Royal Court, to *repudiate* or accept the administration to my Mother's estate. Considering this to be the proper time and place for accepting the administration, which I always intended, I obeyed the summons, and in the presence of the Judges, accepted the administration. To my surprise, it was objected by the Advocate of Mr. John Le Feuvre, (who is the Grand son of the deceased,) that this declaration of my acceptance was too late, and that it ought to have been given on the premises, at the time the inventory was demanded. Of such a law (if it exists) I was perfectly ignorant, and I repeat that I thought the proper *time* and *place* to make the declaration, was, when summoned before the Royal Court. The judges present entertained a different opinion, and the Advocate for myself and my sister's husbands, was directed to appeal to a full Court against this decision,—this, he neglected to do, and from this neglect, I have been not only deprived of my share of the inheritance of my mother's property, but on appealing to the Queen in Council, the judicial lords, on hearing the appeal, decided that I and my relatives were excluded from our right of appeal, from not having in the first instance, appealed to the full Court. It will be scarcely credited

that the *children* can be thus cruelly deprived of their share of their *Parent's* estate, but the facts are precisely as I have stated them. The whole property in *dispute* was about one Thousand Pounds, to have this question tried, the Law expences to be borne by me and my brothers in law, amount to £600 !!! I leave a discerning public to make their own comments on this simple statement. PHILIP LE FEUVRE, (1839.)

The following exposé which is translated from the *Impartial* newspaper, will afford a further elucidation of this subject.

"In the year 1802 Richard Le Feuvre, esq., died, leaving an estate of 200 quarters of rente which was divided as follows:

Richard Le Feuvre, esq., (eldest son).....	129 qrs.
Ph. Le Feuvre, gent.....	50
Miss Ann Le Feuvre.....	8
Miss Jane Le Feuvre.....	8
Miss Elizabeth Le Feuvre.....	8

200 qrs.

Richard Le Feuvre, esq., the aforesaid eldest son, died in 1822. After his decease, a guardian was appointed to his children. The said guardian, with his electors, having examined the estate, and found it bad, recommended Miss Ann Payn, mother of the said deceased, to pass over all the property to him, in order to pay the debts, a part of which she had guaranteed with Daniel Pellier, esq., father-in-law to the deceased, and which amounted to 15,000 francs; inasmuch as he saw no other means of doing honor to the heirs, and to avoid a *decret* which would have caused the loss of all the small debts, without nevertheless the tenant or tenants at all profiting thereby. The said Miss Ann Payn consented to this, on condition that the said Daniel Pellier, esq., guaranteed her one half. Mr. Pellier agreed thereto, provided the said Miss Ann Payn renounced all that was due by the deceased. Miss Payn consented and abandoned in favor of the principal heir the sum of 6,000 francs, or thereabout. The effects of the said deceased were sold by auction: among others 33 quarters of rente which his widow enjoys at present as her dowry. The said rente, after being sold by auction, remained as follows—

Philip Pellier, esq.....	5 quarters.
Ph. Le Feuvre, gent.,	5
Matthew Noel, esq.,	5
Capt. Peter Clement,.....	6
Capt. John Clement,.....	6
Mr. Edward Le Gros,	6

Total..... 33 quarters.

It is to be remarked that the said buyers made the rente go up to half more than any body else would have given for it, and lent themselves by every possible means to raise the rentes and effects in order to liquidate the debts of the succession. The result of their efforts was that the debts were liquidated without Daniel Pellier, esq. being obliged to contribute thereto, in consequence, moreover, of the guarantee which Miss Ann Payn gave to the buyers.

Miss Ann Payn died in 1832, leaving an estate of nearly 100 quarters, a property which it might be supposed, should have been shared among her five abovementioned children. Her grand-son, John Francis Le Feuvre, representative of the late Richard Le Feuvre, esq., obtained immediately after the death of the said deceased, *benefice d'inventaire* on her real and personal property. The co-heirs, seeing no necessity for an inventory, and knowing that the mobiliary debts of the said deceased did not exceed the amount of the arrears of rentes, &c., observed to the wife of the said principal heir (having consulted their *gens d'affaires*, who had advised them to repudiate the said inventory) that an inventory would have no other result than to load the succession with expenses. However, having discovered in time that their repudiation might make them incur the loss of their share of the heritage, the said co-heirs presented themselves before justice, and claimed their said share of the heritage, accepting the said inventory; but they were rebutted from their pretensions, although the law is positive that no repudiation can be of value but in presence of justice. Notwithstanding this, the Court thus put the principal heir in possession of all the property of his grandmother, thereby depriving the co-heirs of the share of the said property to which they had a right. The advocate of the co-heirs had neglected to demand appeal. These, to remedy the negligence, were compelled to present themselves before the full Court by means of a remonstrance. The Court, by the balance of the Chief-Magistrate, refused to hear them. Thus, four children, heirs of rich parents, find themselves entirely deprived of their share of their mother's property!


We forgot to state, that *three years after the decease* of Miss Ann Payn, Mr. J. F. Le Feuvre sent an *action à héritage* to Messrs. Ph. Le Feuvre, Peter Clement, J. Clement and Ed. Le Gros, to see the breaking and annulling of the contracts of the rentes which they had purchased, (as stated above); although the law requires that these actions shall be made in the course of a year and a day (except children under guardian), under pain of nullity; and in spite of the provision of the law, and

the observation on the subject made by the advocate of one of the parties (Mr. Ph. Le Feuvre), the Court condemned the said party to see the breaking and annulling of his contract, and to lose what he had disbursed, although he offered to take oath that he had paid for the rente, the amount of which had been applied to pay the debts of the father. What is remarkable in this case, is that nearly all the officers of the Court interested themselves on behalf of Mr. J. Le Feuvre.

On reflecting on these facts, and comparing them with what has passed in the family of the late Judge Nicolle, one is at a loss to know what to think. On the one hand, eight heirs agree mutually and divide *equally* among themselves the property of their father, the eldest not drawing nor wishing to draw any advantage from his quality of principal heir; on the other, a principal heir heaping law-suit upon law-suit and obtaining by this means the whole for himself. We leave the public to judge on this subject.

We have the honor to be, &c.

PHILIP LE FEUVRE,
PETER CLEMENT,
EDWARD LE GROS,
JOHN CLEMENT."

 The above ought to be a warning to all strangers, especially new comers, from purchasing any description of property in Jersey, except moveables, and such as they may carry away with them at a day's notice. The man who will purchase house, land, or rente, in a country in which, from the vagueness of the law, and the irresponsibility of those who administer it, where there never can be any legal and bona fide security against fraud, deserves to lose every shilling he possesses.

Jailor.—The Jailor or keeper of the Prison shall be nominated by the Bailiff, with the advice of the Royal Court.—*Code, 1771.*

Jews—Marriages if solemnized in Jersey, only according to their rituals, are not recognized by the Royal Court; hence a woman married to a Jew has no claim in law upon her husband while he lives in the Island, and her children are also held to be illegitimate. In the case of the *Crown v. Yelland, 1839*, the evidence of Jew was refused on the ground that the Court could not administer an oath on the Old Testament conformably to the Jewish faith.

Judgments to be pronounced on immoveables, by at least 5 Jurats, and for moveables of the value of 50 livres tournois, by at least 3; they may be re-examined by a full Court composed

of not less than 7 Judges, at the expense of the party who shall require it, for which he shall pay to the Chief Magistrate 3 livres, and to the Jurats, Procuror, Viscount, King's Advocate and Greffier of the Court, 20 sous each.—*Code*, 1771.

Judgments, forced, in violation of conscience.—In the case of *Godfray v. Romeril*, 1838, which was an action for compensation in damages for an alleged libel, before a full bench of seven Jurats, D'Avranche, Bertram and Le Quesne, were for affirming the decision of the inferior Court, finding the article a libel, and adjudging defendant to £50 damages and costs : Le Maistre and Bisson to discharge defendant from the action, and Nicolle and Duhamel to modify the former judgment : on which the Bailiff De Venlle, pronounced the judgment of the inferior Court to be affirmed, mulcting defendant in £50 damages and costs ! An objection was taken to the manner in which the Bailiff assessed the judgment, on the ground, that it ought to have been rendered for the smaller damages, when the Jurats who were of opinion that the defendant should be discharged, were compelled by an Act of the Court to forego that opinion, and to conform themselves to that of the majority, agreeably to usage ; in consequence of which they adjudged defendant to pay £10 damages and costs, notwithstanding their reiterated conviction that the article was *not* a Libel. In the case also of *Richards v. Pinel*, 1838, before six Jurats, the Bench being equally divided, the Bailiff was called upon to give a casting vote, and having declared that "his opinion was quite different to that of his colleagues," he was required to conform himself to one side or the other, on which he found himself compelled to give a judgment in violation of his conscience !

Judgments, particulars connected with to be registered.—A standing Order in Council dated 16th March 1729, positively enjoins the registering of all parts of processes and granting copies to either party. The order saith 'Whatsoever resolutions the Court shall come to during the course of such (new) trial, they shall enter up by way of order if desired or insisted upon by the acts of the said Court ; and that this be a general standing order to be observed, not only in this cause, but in all causes for the future ; and the bailly and jurats of her Majesty's said Royal Court of Jersey, and all others whom it may concern, are to pay a strict regard to her Majesty's pleasure hereby signified, and not to presume, in any case whatever, to deviate therefrom.

Judgment debts recovered in England, how enforced in Jersey.—If a debtor escapes from England, without satisfying

a Judgment, and takes refuge in Jersey, the Plaintiff or his Attorney may action him before the local Court, on the Judgment, as may be seen by the following case :—Gaylor and Wife v. Opey and others, (1836.) This case was to recover satisfaction of a judgment in an action brought by the plaintiffs in the Court of Common Pleas, in England, against the Defendants, for a brutal assault, in which a verdict was given for £100 damages and costs. Immediately after the trial, the defendants sold out of the English funds about £2,000, and absconded to this Island. The Plaintiff's Attorney, Mr. John Tucker, of No. 40, Basinghall-street, London, having fortified himself with the necessary authority, and an office copy of the Judgment, followed the defendants to Jersey, where they were arrested, and one of the firm of the Commercial Bank became bail for their appearance in Court on the day of trial. It was understood that the money brought over by the defendant Opey was invested, through those gentlemen, in the French funds. The Solicitor General appeared for plaintiffs and Mr. Advocate Godfray for defendants. The latter gentleman in his argument, raised several legal objections to the jurisdiction of the Jersey Court to enforce a Judgment of the Courts of Westminster, as well as to the sufficiency of the Power of Attorney, and the Office copy of the Judgment, all of which objections were overruled by the Court : the defendants were condemned to satisfy the judgment and costs, and, in default of payment, committed to prison. The following is a translation of the Act containing the reasons assigned by the Court for disallowing the objections and confirming the arrest.

“ At the Royal Court of the Island of Jersey.

“ The year one thousand eight hundred and thirty-six, the thirteenth day of August ; between Mr. Abraham Opey and Elizabeth Opey, his wife, and Mr. James Opey, on the one part ; and John Tucker Esq., Procureur of Mr. William Robert Gaylor, and of Sophia Gaylor, his wife, on the other part ; actioning them to see confirmation of the arrest of their persons by the Officer, in virtue of a certain Order of Justice, to them signified ; shewing that by the verdict of a jury rendered agreeably to the forms of the English Law, at Guildhall, in the City of London, before Sir James Allan Park, one of the Judges, and in virtue of the Judgment of the Court which followed : dated the 19th day of July, 1836, Mr. Abraham Opey and Elizabeth Opey, his wife, and Mr. James Opey, have been condemned to pay to the said William Robert Gaylor and to the said Sophia Gaylor, his wife, the sum of

one hundred and forty-five pounds, and ten shillings, sterling, for damages, costs, and expenses : that the said Abraham Opey, Elizabeth Opey, and James Opey have quitted England, without paying the said sum of one hundred and forty-five pounds and ten shillings, sterling, which they owe to the said William Robert Gaylor and Sophia Gaylor, his wife, and have taken refuge in this Island : and praying, that the said Abraham Opey and Elizabeth Opey, his wife, and James Opey, may be condemned to pay to the said Remonstrant, for and in the name of his said Constituents, the said sum of one hundred and forty-five pounds and ten shillings, sterling, money of Great Britain ; the whole as is more fully set forth in the said Order, on the penalties contained therein. And to hear record of the said arrest. On the demand of the said Defendants, that the Plaintiff produce his procuration, the Court, considering that the said Defendants have not made this demand until after having pleaded relatively to the authenticity of the Judgment in question, have judged that they came too late to make the said demand ; from which sentence they are allowed to appeal *en fin de cause* before a greater number. And on the pretension raised at first by the said Defendants, that they were not seizable in virtue of the document that was produced, and that were it authentic they could not be pursued in this Island, for a matter which originated in England ; considering, that the document in question, being certified by the signature of the Clerk of the Treasury, is sufficiently authentic and that by the custom of the country every British subject, though not a native of Jersey, can be pursued in this Island, for the recovery of a debt contracted in England, the Court putting aside the said pretension of the Defendants, have judged that they must plead to the merits ; from which sentence the said Defendants are allowed to appeal *en fin de cause*, before the greater number. After which the arrest of person of the said Defendants remains confirmed, and they are condemned to the demand and to the costs, and in default of their paying the same, they are committed to prison. From which sentence the said Defendants are allowed to appeal before a greater number : in consequence of the said appeal, the Plaintiff is allowed to protest against all losses, prejudices, interests and damages, and the officer of Justice is authorised to receive bail to reproduce the said Defendants, and to answer to the action, whenever called upon, on pain of satisfying the judgment. CHAS. DE STE. CROIX, Commis-au-Greffé."

—The appeal was not prosecuted. [See *Jurisdictions*, &c.]

Judgments of Colonial Courts enforced in England.—An action is not maintainable on a colonial judgment, unless it appear that the defendant was regularly served with process, and had an opportunity of defending the suit, even although it appear to be the practice of that Court not to give a personal notice. *Buchanan v. Rucker*, 9 East., 192. 1 Camp. 25. For the law will not raise an *assumpsit* upon such a judgment obtained by default against to have been summoned by nailing up a copy of the declaration at the Court house door : it not appearing that he had ever been present in the Colony, or subject to the jurisdiction of the Colonial Court at the time the suit commenced and afterwards, although by a law of the Colony, if a defendant be absent from the island, and without an attorney, manager, or overseer there, such mode of summoning him shall be deemed a good service.—*Ibid.* An action will not lie in the courts of Westminster upon a judgment of a foreign court, unless it clearly appear by the transcript of the proceedings that the defendant was subject to the jurisdiction of the foreign court, and that the judgment pronounced against him was final, and for a definite sum. *Obicini v. Bligh*, 1 M. & Scott, 477 ; 8 Bing. 335, overruling *Malony v. Gibbons*, 2 Camp, 504. An action is maintainable without declaring upon or proving the cause of action upon which judgment was given. *Crawford v. Whittall*, 1 Dougl. 4, n. ; Lofft. 154. Or the ground of the judgment. *Walker v. Witter*, 1 Dougl. 1. Unless the contrary be shewn, the court will presume that the decision in a foreign judgment is consonant to the justice of the case. *Arnott v. Redfern*, 3 Bing. 353 ; 11 Moore, 209 ; 2 C. & P. 88. An action for debt will lie upon the decree of a colonial court of equity, for the balance of an account between partners. And in such an action, the Court will look at the substance, without regarding the form of the proceedings upon which the decree is founded. *Henley v. Saper*, 2 M. & R. 153 ; 8 B. & C. 16. A foreign judgment cannot be questioned in the Courts of Chancery in this country. Therefore, a bill for a discovery and a commission to examine witnesses abroad, in aid of the plaintiff's defence to an action brought in this country on a foreign judgment, is demurrable. *Martin v. Nicolls*, 3 Sim. 458. To render a foreign judgment void, on the ground that it is contrary to the law of the country where it was given, it must be shewn clearly and unequivocally to be so. *Becquet v. MacCarthy*, 2 B. & Adol. 951.

We now give other cases to show, that even *after an arrest* in Jersey or Guernsey on a judgment, if the party escapes

without satisfying the same, he may be arrested again in England.

After an arrest in a foreign country upon a judgment obtained there, the defendant, having escaped, may be again arrested here in action on that judgment. *Aliven v. Furnival*, 1 Dowl. P. C. 614. A defendant, who had been arrested in America, may be again arrested here for the same cause of action. *Maule v. Murray*, 7 T. R. 470. There is no objection to an arrest here, after an arrest in a foreign country, where it does not distinctly appear that the defendant could have the same redress and benefit by the proceedings abroad as here. *Imlay v. Ellefsen*, 2 East, 453. Semble, where under process from the supreme court of New South Wales, (established by act 4 Geo. 4, c. 96), the goods of a defendant are attached and rendered to the plaintiff in execution, or bail are put in to pay the condemnation money, he cannot be arrested for the same cause of action in this country. *Naylor v. Eagar*, 2 Y. and J. 90.

The arrest of course is *founded on affidavit*, which if made abroad, must contain all the requisites that are essential to an affidavit made in England. The court will take cognizance of affidavits sworn before foreign magistrates, if properly authenticated. *Dalmer v. Barnard*, 7 T. R. 251. An affidavit of debt made by a plaintiff residing abroad, before a foreign magistrate, whose signature to the jurat, and his authority to administer oaths and take affidavits there, are verified in this country, is a sufficient foundation for a judge's order to hold to bail. *Omealy v. Newell*, 8 East, 364. The court refused to discharge on common bail a defendant held to bail on a judge's order granted upon the copy of an affidavit of debt made at Hamburgh, authenticated by the magistrates of that city, and corroborated by persons here, to the credit of the party making the affidavit. *Bovara v. Bessessti*, 3 Dougl. 336. Semble, that an affidavit made before a British vice-consul abroad, in the absence of the consul, is sufficient. *Anon.* 1 Chit. 463, 721. An affidavit, though made in Ireland, if made for the purpose of being used in this country, ought to contain all those requisites that are essential in an affidavit made in England. *Nesbitt v. Pym*, 7 T. R. 376, n.

The affidavit must set forth the amount of the claim in Pounds Sterling of *British* money: An affidavit on an Irish judgment must shew the value of Irish money. *Storie v. Ball*, 3 Chit. 16. An affidavit made before a British consul in a foreign country, stated that the defendant was indebted to the plaintiff in a certain number of pounds sterling:—Held, by three

justices, that the affidavit was insufficient, inasmuch as it did not appear with certainty, whether the defendant was indebted in British or Irish sterling money. *Abbott, C. J. diss.* It ought to have said "pounds sterling English." *Pickardo v. Machado*, 7 D. and R. 478 ; 4 B. and C. 886. An affidavit stating that defendant was indebted to plaintiff, "as liquidator of an estate duly appointed by the law of France," is defective for not shewing that plaintiff, as liquidator, is by the law of France entitled to sue. *Tenon v. Mars*, 3 M. and R. 38 ; 8 B. and C. 638.

Judgments abroad, how proved in England.—The sentence of a foreign court, of competent jurisdiction, is evidence of *res judicata*, and is not to be called in question in a collateral cause in the courts of this kingdom. *Hamilton v. Dutch* E. I. Comp. 8 Bro. P. C. 264. A foreign judgment is *prima facie* evidence of a debt, and that every thing was done in the Court in which it was obtained that was necessary to support it. *Arnot v. Redfern*, 11 Moore, 209 ; 3 Bing. 353 ; 2 C. & P. 88. To prove an examined copy of an Irish judgment, it is not enough for the witness to say that he examined the copy with a record produced to him in the room over the four courts at Dublin, where the records of the superior Irish courts are kept, without seeing whence the record in question was taken, or knowing the person who produced it to be an officer of the court. *Adamthwaite v. Sygne*, 4 Camp. 372 ; 1 Stark 183—*Ellenborough*. The English courts cannot take notice of any judicial act done in a foreign country, without evidence of the laws of such country. *Ganer v. Lanesborough (Lady)*, Peake, 18—*Kenyon*. In an action on a foreign judgment, it is not sufficient to prove the judge's handwriting subscribed to it, without proving that the seal affixed thereto is the seal of the court. *Henry v. Ady*, 3 East, 221 ; 4 Esp. 228. If a colonial court possess a seal, it must be used for the purpose of authenticating a judgment of the court, although it is so much worn as no longer to make any impression. *Cavan v. Stewart*, 1 Stark. 525—*Ellenborough*. In an action on a foreign judgment, the judgment produced at the trial must be authenticated by the seal of the foreign court, or evidence must be given that the court has no seal ; and then the judgment may be established by proving the signature of the judge. *Alves v. Bunbury* 4 Camp. 28—*Ellenborough*. In assumption on two judgments recovered in the supreme court of Jamaica, copies of the judgments purporting to be signed by the clerk of the court, and certified by him to be true copies, accompanied by a certificate of a notary public of his being clerk of the said court, and by

another certificate of the governor, under the seal of the island, that the person so certifying was a notary public, were held to be admissible evidence to prove the judgments. *Appleton v. Braybrook* (Lord), 6 M. & S. 34 ; 2 Stark, 6. And see *Walker v. Whitter*, 1 Dougl. 1. A judgment in the court of Common Pleas in the island of Tobago was proved by a witness swearing to the handwriting of the chief justice of the court, and saying that he would have acted upon the seal appended to it as the seal of the island. *Buchanan v. Rucker*, 1 Camp. 63 ; 9 East, 192

It would appear also by the following cases, that a *personal contract* entered into in the Islands may be enforced in England : the remedy being governed by the English law, and the merits of contract by the law of the country where it was entered into :—A defendant may be held to bail in this country notwithstanding proceedings had for the same cause of action in Scotland, such proceedings not enuring to deprive the party of liberty there, and the debt being unfinished. *Sharp v. Johnston*, 2 Scott. 407. Where a contract is made between persons domiciled in a foreign country, and in a form known to the law of that country, the court in administering the rights of parties under it, will give it the same construction and effect as the foreign law would have given to it. *Anstruther v. Adair*, 2 Mylne and K. 513. If, therefore, a domiciled Scotchman would be held entitled in Scotland, by virtue of a marriage contract executed there, in the Scotch form, to receive whatever property accrued during coverture to his wife, this court will enforce his right, as against any such property coming within its jurisdiction, and will not raise an equity for a settlement in favour of the wife, in opposition to the provisions of the contract.—*Id.* The rule applicable to contracts made in one country, and put in suit in the courts of law of another, in this :—The interpretation of the contract must be governed by the law of the country where the contract was made, and the mode of suing, and the time within which the action must be brought, by the law of the country in which it is sought to be enforced. *Trimby v. Vignier*, 4 M. and Scott, 695 ; Bing. N. R. 151 ; 6 C. and P. 26. Therefore, where a promissory note was made by the defendant in France, and indorsed in blank by the payee in that country, the maker and payee both at the times of making and indorsing the note being domiciled there :—Held, that as no action could have been maintained in the French courts of law, in the name of the indorsee, the indorsement according to the law of France operating as a procuration only, and not as a transfer, so no action could be maintained

by him in our courts.—*Id.* By the French law of prescription relating to bills of exchange, the debt is not extinguished, but the remedy only is taken away. *Huber v. Steiner*, 2 Scott, 304 ; 2 Bing. N. R. 202 ; 1 Dowl. P. C. 781 ; 1 Hodges, 206. Where a personal contract made in a foreign country is sought to be enforced, so much of the law as affects the rights and merits of the contract is adopted from the foreign country, and all which affects the remedy is taken from the *lex fori* of the country where the action is brought.—*Id.* The distinction between that part of the law of the foreign country where a personal contract is made which is adopted, and that which is not adopted by our courts, is, that so much of the law as affects the rights and merits of the contract, all that relates *ad decisionem litis*, is adopted from the foreign country—so much of the law as affects the remedy only, all that relates *ad litis ordinationem*, is taken from the *lex fori* of that country where the action is brought. In the interpretation of this rule, the time of limitation of the action is governed by the law of the country where the action is brought, and not by the *lex loci contractus*.

It ought, however, to be observed, that if the plaintiff should be actually *domiciled* in this Island, or in any other country *beyond the jurisdiction* of the said Courts, as a permanent resident, he may be required to give security for the costs, as may be seen by the following :—If the plaintiff *reside permanently abroad*, the court will stay proceedings till he give security for the costs. *Pray v. Edie*, 1 T. R. 267. *Elan v. Rees*, 3 Doug. 382. But see *Lamii v. Sewell*, 1 Wils. 266, and *Boswell v. Irish*, 4 Burr. 2105. So in *C. P.* *Ganesford v. Levy*, 2 H. Black, 118. But see *Parqout v. Eling*, 1 H. Black. 106. So, in the Exchequer. *Demauroffe v. Jackson*, 13 Price, 603. So, if the plaintiff reside in Ireland. *Fitzgerald v. Whitmore*, 1 T. R. 362. Or Scotland. *M'Lean v. Austin*, *Sheriff v. Farquharson*, *Still v. M'Iver*, 1 Tidd's Prac. 579. But see *Maxwell v. Mayer*, 2 Burr. 1026 ; 1 W. Black.

If a plaintiff should not be domiciled in Jersey, or in any other country *beyond the jurisdiction* of the English Courts, but be only a temporary resident here, security for costs would not be exacted :—For security for costs is not required of an English subject, though abroad. *Tullock v. Crowley*, 1 Taunt. 16. Security for costs will not be required from an English officer serving in South America. *O'Langhla v. Macdonald*, 3 Moore, 77. Nor from a foreigner during the time he is resident in this country. *Anon.* 3 Moore, 78. Security is not required from a person whilst in this country, although

usually residing abroad. *Anon.* 8. Taunt. 737. And although it be sworn he is about to leave the country. *Ciragno v. Hassan*, 6 Taunt. 20 ; 1 Marsh.. 421. If the plaintiff is a native of England, and depart for France for a mere temporary absence, the courts will not compel him to give security for costs. *Anon.* 2 Chit. 152. Where a plaintiff (a native of this country) quits it for a mere temporary residence abroad, the court will not require him to give security for costs ; and an application for such a purpose cannot be supported on a mere affidavit of belief that it was the intention of the plaintiff to reside permanently abroad. *Cole v. Beale*, 7 Moore, 613. *When required in Equity.*—The simple fact that the plaintiff is gone abroad is not sufficient ground to compel him to give security for costs. *Hoby v. Hitchcock*, 5 Ves. jun. 699. No order that a plaintiff residing abroad shall give security for costs will be made when there are co-plaintiffs residing in England. *Walker v. Easterby*, 6 Ves. jun. 612. A plaintiff is not compellable to give security for costs, unless he state himself, or it be sworn that he is resident abroad, or going to reside abroad. *Green v. Charnock*, 2 Cox, 284 ; 3 Bro. C. C. 371 ; 1 Ves. jun. 396. It is not sufficient that the plaintiff appears by the bill to be out of the jurisdiction, he must appear to be resident abroad.—*Id.* If a question should arise regarding the law of the Country, where the contract originated, or judgment was obtained, the said law must be proved in evidence, as a matter of fact.—[See *Colonial or Foreign law, how proved in England*, p. 127.]

Jurats, origin of.—The Jurats are twelve in number. “Thesetwelve” says Mr. Falle, “it pleased the King, in the Charter of their Election, to dignify with the Title of Coronatores Jurati ; meaning thereby to have them partake of the power of two sorts of Officers, viz. the Coroners in England and the Jurats in Gascony ; for here I take Coronatores Jurati to be a compound of two substantives, which is not unusual. The Coroner is an Officer unknown in France but apud nos (Anglos) says Sir Henry Spelman, Officialis pervetustus est, ad tuendam pacem, et dignitatem Regiam, in quovis Comitatu, populi suffragiis constitutus, &c. After the same manner speaks Lord Chief Justice Coke. *This office*, says he, *in ancient times was of great estimation, for none could have it under the degree of a Knight.* How it fell from that estimation does not concern us, those Twelve being instituted when it was in full credit and power. As for the name of Jurats, it's original is from Gascony, that part of France which King John affectioned most, and where he maintained himself

longest. And this is the name that adheres to our Magistrates that of Coroners being dropt and no longer mentioned. For thus all Orders from the Sovereign run at present, *To our trusty and well beloved, the Bailly and Jurats of our Island of JERSEY.* In the Language of the Country 'tis *Jurés*, but among the people they are more commonly stiled *Justiciers*." Mr. Durell in his notes observes: "It is unnecessary to seek for so many explanations of the words *Coronatores Jurati*. They were acting under the Crown, as we still say, Crown Officers, Crown Lands, &c., in the same sense, as the word *Royal* is now used on the most trivial occasions. The words *jurés* and *justiciers* are nearly now out of common use, for which that of *judges* has been substituted. Anciently the word judge was exclusively applied to the Bailly, in the English sense of the *Judge and Jury*."

Jurats, their Qualifications.—Every Jurat must be a British Subject, but not necessarily a native of the Island. By the Code of Laws of 1771, it is provided that "none shall be chosen to fill the office of Judge, but persons of integrity and well affected towards the government, and who shall conform themselves to the reformed religion." They are chosen for life, but may be discharged on petition, or be dismissed for improper behaviour by an Order in Council, as was the case in the reign of Geo. 2, 1735, when 5 Jurats were dismissed from the bench for corruption in their office. No persons are rendered incapable of the magistracy but such as are bakers, brewers, or vinters; which inhibition arises from the nature of their occupation, and not that of their quality. They have no fee or reward. A person who has been dismissed from the office of Constable is not necessarily ineligible to fill the office of Jurat. [Order in Council, Aug. 29, 1810.] The following remarks of the Commissioners to the King in 1811, applies with much force: "Your Majesty is informed, that the body of Jurats constitutes, not only the aristocratical branch of the Legislature, but likewise forms *the only Court of Justice* in the island, under the denomination of the Royal Court, which holds cognizance not only of all pleas, civil and criminal, (with the exception of high treason,) but also of all military offences, against the rules and orders established for the discipline of the militia. And for the exercise of this office of dignity, no previous qualification is legally requisite, either in respect of rank, property, or education. It may possibly appear extraordinary, that no other qualification should be required from candidates, for an office so important, extending as it does to matters of military, as well as civil cognizance, than those which rest in

repute and profession merely." By an Order in Council, 15th July, 1813, it is declared, that no person should be elected to the office of Jurat who, in addition to the qualifications established by Law, is not further qualified by education, character and situation, for the discharge of so great a trust. By another Order in Council of the 11th July 1778, persons who have been elected to the office of Jurat can be compelled to take the oath and discharge the duties thereof.


Jurats, their Duties.—The official duties of a Jurat, either as a member of the Royal Court, or of the States require much loss of time, and necessarily occasion some expence. In modern times since the States have assumed considerable importance as the local legislative body, a permanent seat in that Assembly is become one of the principal inducements to be elected a Jurat. It is however the opinion of many persons that the judicial functions of the Jurats on the Bench, and their senatorial duties in the States are incompatible, and ought to be separated. But like many other speculative theories, this may in fact be correct, though in practice no evil may have resulted from having followed the opposite course.—[Durell.]

Their Jurisdiction.—The institution of Jurat, is said to be derived from a charter granted by King John to the islands of Jersey and Guernsey, soon after the alienation of the rest of the duchy of Normandy (of which they were part) from the Crown of England, and jurisdiction was given to them in the absence of the King's Justices itinerant, and together with those justices when they were present, over all causes arising in the island, except in such cases as are therein excepted. In short, the King granted to them the power of judging in all manner of actions, as well real, personal or mixed, as criminal or capital, arising within the islands, except in cases of treason, coining, and violence to the Bailiff, or Jurats, whilst in the execution of their office: and yet their lies no appeal, in case where a man's life or liberty is at stake. *Mode of Electing them.*—On the death of a Jurat, (and rarely from any other cause does a vacancy on the Bench occur, inasmuch as the office is for life) intimation is given of the same to the chief Magistrate, who convenes a full Court, after the funeral of the deceased has taken place, when the Attorney General moves the bench for a new election, on which the Court issues an act or writ fixing the day and appointing a magistrate, or one of the Crown Officers to preside the poll in each parish, and to collect the votes. The Constable or Chief of Police is required to furnish a list of the persons inscribed on the parochial rate, and opposite their names is placed the name of the person for whom they vote.

The writ is made returnable on the next Court day following the election, when if no legal cause is shown for the contrary, the candidate who has received the majority of votes is sworn into office, and takes his seat on the bench. *Their Oath.*—The following is the translation of the oath of office :—" You, ———, since it has pleased God to call you lawfully to this charge, you swear and promise by the faith and oath which you owe to God, that you will well and faithfully execute the place and office of *Jure-Justicier*, in the Royal Court of our Sovereign Lady Victoria the 1st, by the Grace of God, Queen of Great Britain and Ireland, &c., in this her Island of Jersey : and that you will recognise Her Majesty as Supreme Governor under God in all her Kingdoms, Provinces and Dominions ; renouncing all foreign and strange superiorities. You shall maintain the rights of Her Majesty and of her subjects, and assert the honour and glory of God, and of his pure and sacred word. You shall administer good and prompt justice, both to rich and poor equally, without respect of persons, agreeably to our laws, customs and usages, confirmed by our privileges, upholding them together with our liberties and franchises, in opposition to all whomsoever that would infringe them. Moreover, you shall cause to be punished and chastized all traitors, murderers, robbers, blasphemers of God's Holy Name, Drunkards, and other scandalous persons, each according to his deserts ; opposing all seditious persons, so that the Queen's authority and that of justice may remain in full force. You shall assist at Court, whensoever required, unless you have a lawful excuse to the contrary, and in such case you shall send another Jurat in your place ; *giving your advice, opinion, and counsel, according to the uprightness of your conscience.* You shall honor and cause the Court to be respected ; and shall maintain and cause to be maintained the right of widows and orphans, strangers and other defenceless persons. Lastly, in your conclusions, you shall *yield and conform yourself* to the better and sounder opinion of the Bailly and other Jurats. This you promise upon your conscience."

Jurats, their precedence.—In the case of Philip Le Maistre, esq., who was elected Jurat in 1831, and sworn into office in 1835, the Court decided agreeably to an Order in Council of 1629, that he should take precedence of Judges Bisson, De St. Croix and Nicolle, who had been sworn into office prior to him, and that he should take his seat from the date of his election. In 1629, two letters from Council granted to the Seigneurs De St. Ouen, De Rozel, de Samarez and de la Trinite,

the right of precedence on the bench of the Magistrates of the Royal Court, when they should be elected. These letters ordered also that the other Jurats elected should take their rank, conformably to the date of their election. In 1684, an Order of Council confirmed the latter clause.

Jurats, aged.—On the 29th Aug. 1655, it was ordered by Parliament, that the Jurats of the Island of Guernsey being twelve in number, do by turn exercise the place and office of bailiff of that Island, and that each of them in his course do hold the said office for the term of one month and no longer. And the present Bailiff, Peter de Beauvoir, esq., do begin the first month, to commence on the 1st of October next, and after that the jurats do take their turn according to their seniorities. And as there are five of the present jurats of the said island who, by reason of their great age and infirmity of body, are disabled from serving in their place, viz. Messrs. Guill, Blondel, Brehaut, Thomas Cary and James Brehaut, it is also ordered by the Parliament that the said individuals be dispensed with from being any longer jurats, in respect to their great age and infirmity of body. And the States of the Island are required to proceed to the election of five other persons in their stead. Signed Henry Scobell, clerk of Parliament.  Several Jurats in Jersey, owing to their great age and infirmity, ought to be relieved from their duties in like manner.

Jurats, death of.—The Court is closed on the death of a Jurat, or any near relation, and is not opened again until after burial. Thus a suitor may be ruined if his appeal should expire in the mean time.

Juries.—Every criminal accusation is first examined by a petty Jury termed *l'enditment*, composed of the parochial Constable and twelve of his officers—seven of who must concur to find a verdict of guilty. The Jury once appointed must not communicate outside with any person whatsoever: the law is so strict on this head, that it enjoins that the Jury shall be summoned only after sunset, to prevent their having any external communications. The prisoner has a right of appeal to a Grand Jury called *la Grande-Enquete*, composed of twenty-four persons from the three neighbouring parishes. More are sometimes summoned. The prisoner may on good ground, object to any of them. Five out of these twenty four will acquit a prisoner. The verdict instead of being as in England, guilty or not guilty, is here either *plutôt coupable qu'innocent* or *plutôt innocent que coupable*, which may be rendered "rather culpable than innocent" or "rather innocent than culpa-

ble." The oath administered to the Jury is as follows : " You promise and swear by the faith and oath you owe to God, that well and faithfully you will report to justice, that which in your conscience you shall think, respecting the crime which — is accused namely, if he is rather guilty than innocent, of the charge laid against him ; which you shall do without any favour or partiality, as you would answer before Almighty God."

Jurisdiction of the Jersey Court.—The Charter of King John gives jurisdiction to the Bailiff and Jurats in matters *arising* within the Isle, but says nothing of holding pleas of all manner of actions or suits, as well criminal as civil, real personal and mixed, *arising, happening or being* within the Bailiwick. This doctrine was recognized by the Court for many centuries : the last decision however we believe is the following :—In the case of *May v. Milner*, (clerk) 1820, an arrest had been made on certain monies due from two persons in the Island to the Defendant, at the suit of the Plaintiff, holder of a bill of exchange, drawn by Defendant on one Gurney of London, which had been protested for non-payment. Counsel for defendant objected to the competency of the Court, on the ground that the case had arisen out of its jurisdiction, and that neither of the parties were present in the Island, both being represented, plaintiff by his attorney and defendant by an administrator, named purposely for this suit : he therefore contended that as by the Charter of King John, from which the Court derived its powers, its jurisdiction was limited only of such matters as should *arise* within the Island, they could not entertain the present action. Counsel for plaintiff denied the application of the Law, as the present case related to a bill of exchange, the payment of which could be enforced in any part of the world, wherever the party liable had assets. Defendant having available assets in this country, it was lawful for his client to attach them for the payment of the Bill. The Court decided that the Charter of King John was positive and did not give them jurisdiction in any matter that originated out of the Island, and as the contract was an English transaction they were not a competent tribunal to entertain the suit.

Subsequent decisions have overruled the above judgment. In the case of *Leigh v. Vincent* (clerk) 1820, the person of defendant had been arrested by means of an *ordre de justice* for damages, laid at £2,000 for a breach of promise of marriage. It appeared that in the month of Aug. 1816, an acquaintance was formed between the parties then living at Exeter ;

soon after which defendant offered marriage to plaintiff, which was agreed to, and they exchanged mutual promises: defendant wrote to plaintiff's father, asking his consent to the proposed match, and fixed the time of marriage, when he should obtain a permanent situation, which he was then expecting. The correspondence continued to the 17th Nov. 1817, when Vincent wrote to Miss Leigh, saying that he had found a situation in Jersey, which would enable him to fulfill his engagement with her forthwith: from that time she had heard no more from him, but having learnt that he was residing in Jersey she wrote to him again, and at length received an answer in which he denied his promise, and evinced a determination to evade it. Miss Leigh came to the Island, and had the mortification to find that Vincent had married another person. Letters in support of the fact were put in and read. Counsel for defendant objected to the competency of the Court, the cause of action having arisen out of the Island. Counsel for plaintiff maintained that the cause could be entertained in this jurisdiction, by reason that the marriage was proposed to be celebrated *here*, that it was *here* the defendant had refused to fulfill his engagement, or rather had put it out of his power so to do, as was proved by the fact, that he had married another person. The learned Gentleman further maintained that a cause of this nature could be brought before the tribunals of any country, and instanced the case of Mad. Sarazin in France, who obtained considerable damages from General Sarazin, for having married her in England, having at the same time a wife living in France. The Bailiff, (Sir Thos. Le Breton) assimilated the present case to that of a bill of exchange drawn in England and made payable in Jersey; he would ask, would not the bearer have a right to come here and demand payment. Judge Benest held the court to be competent. Judge Anley said that he would not judge against the charter of King John, and the case not having arisen in the Island, he held the Court to be incompetent. The Chief Magistrate adopted the opinion of Mr. Benest, holding the competency of the Court, on which an order was made for hearing witnesses in the case.

The King v. Sims, (1830.) This action arose out of a prosecution against the defendant in *England*, for penalties incurred in his business as an auctioneer. Judgment had been obtained in the Court of Exchequer in 1835. for £305 16s., and it was to recover this sum with costs, that the present suit was instituted. Several preliminary objections were raised by the Advocate for the defendant, the first of which was, the incompetency of the Court, contending that this being a case

that had been brought before a competent tribunal in the country where the cause of action arose, this Island, which had its own independent laws, and owed no obedience to the decisions of any foreign Courts of jurisdiction, could not entertain a case of this nature, which might, with great propriety, be prosecuted in the country where it arose. In proof of this position, the case of *La Marque v. Grenouilleau*, was instanced, wherein the Court had decided upon its incompetency to entertain the question which arose out of the determination of a Court of competent jurisdiction in a foreign country. The Attorney-General considered that if the judgment of the Court of Exchequer was not impeached or called in question, it was a good ground of action here. He instanced the case of *Wright v. Stephens*, in 1824, which had been decided by the Court of Jersey, founded upon a bill of exchange, on which a verdict had been obtained in England, and which had been contested through all the stages in this Island. It had first been decided by two Jurats, and confirmed by a full Court, and upon appeal to the King in Council, it was again confirmed there. This shewed that the Royal Court of Jersey did take cognizance of the acts of the Courts in England. As to the case of *La Marque v. Grenouilleau*, quoted by the other side, it bore no analogy at all ; it was a question between two foreigners, which, after being decided by a Court of competent jurisdiction in their own country, they wished to renew here ; but the Court very properly decided that they could not enter into the business, their own Courts being open to them, to rectify any error in the judgment that had been given. Upon these grounds, he concluded that the objection of the defendant ought not to be allowed. Defendant's counsel again contended that the objection taken, grave as it was in regard to the particular fact, before the Court, was of still higher importance, as it involved the privileges of the island. They had an independent jurisdiction and ought to maintain it, in opposition to any other Court. As far as this independence was concerned, the Court of Exchequer, in England, was as much foreign as that of Bordeaux, or any other tribunal in France. The case of *Wright v. Stephens*, quoted by the Attorney-General, confirmed his view of the question ; for in that case the competency of the Court was not mooted. He therefore trusted that the Court would admit the validity of the plea.—The Court overruled it. Defendant's counsel then urged another plea, that Mr. Le Breton, being only Attorney-General for Jersey, his acting for the Crown was necessarily confined to facts arising in the island, and that he could not

in that capacity, undertake the suits of the Crown arising in England, without special authority. (Here he read the oath.) The Attorney-General maintained that he was nominated without restriction, and that it was part of his duty to attend to the interests of the Crown, wherever originating.—The Court overruled the objection. Counsel then maintained that all actions by letters patent must be registered in the Court before they could have process upon them, and reminded the Jurats of their oath. This objection was also overruled. Counsel at length proceeded to argue that Writs or Warrants, issued in England, must be executed by the officer of the Court from which they emanate. In the present case this had not been done, and could not be done. He then went through the different Writs by name, for levying on the person and goods in execution by order of the Court, contending that the arrest and summons by the officer in Jersey was not a compliance with the forms required, therefore that the defendant must be discharged.—The Court, without any reply, overruled the objection, and confirmed the arrest with costs.

Jurisdiction of the English Courts in matters arising abroad. Offences committed out of the realm, are not cognizable by the Court of K. B. unless there is a special act of Parliament for the purpose of giving it jurisdiction.—*Rex v. Munton*, 1 Esp. 62—*Kenyon*. But if any part of the offence has been committed in England, the Court of K. B. then has jurisdiction.—*Id.* The King cannot, by charter, authorise the trial of crimes out of the country where they were committed.—*Rex v. Gough*, 2 Dougl. 791. The Courts of Common Law have concurrent jurisdiction with the Admiralty Courts in murders committed in all havens, creeks and rivers in this realm.—*Rex v. Bruce*, 2 Leach C. C. 1093 ; R. and R.C.C. 243. Regularly all questions of title to land in the colonies, are to be decided in the first instance by courts of local jurisdiction from which an appeal lies to the King in Council.—*Attorney-General v. Stewart*, 2 Mar. 143. If a bond is made at a place beyond sea, it may be pleaded to have been made at Islington, in the county of Middlesex, or elsewhere, by fiction of law, in order to try the same in England, &c, for *debitus et contractus sunt nollicis loci*. Col. Lit. If any part of an offence be completed in Middlesex, though the rest were committed abroad, an indictment lies in that Court, *East. Rep.* 63, *3. new Rep.* 91, and this though the defendant himself was out of the Kingdom at the time, if he caused the offence to be committed in England, as where the defendant sent over a libel from Ireland to be published at Westminster 6 East. 589, 590. Persons in his

Majesty's service *abroad* committing offences there, may be prosecuted in the King's bench by indictment or information laying the venue in Middlesex, 42 George 3, c 85 s. 18. So offences committed in the East Indies are subject to this jurisdiction, 24 Geo. 2 see 2 c. 35. s. 64. 78. 81. So if high treason be committed out of the Kingdom it can only be tried in the Court of the King's bench, or under a special commission, 33 Henry 8. c. 23, 1 Leach 157. 1 Hale 1. Felons who commit an offence in either Island provided it be *completed* in England, can be tried there, as was the case at the Lent Dorset Assizes of 1832, when George Prowes indicted for stealing wearing apparel, the property of Thomas Cundy, of *St. Helier, Jersey*, was convicted and sentenced to be transported for 7 years.

Justiciers or Jurats, packing of.—The following statement will explain how the Jurats are packed, or summoned out of their turns to hear certain causes, so that they may be decided by those who are strong partizans, and who usually vote for the faction to which they are allied :—"Before a Magistrate of the Royal Court of this Island, hereunto subscribed. Personally appeared Philip De Carteret, Esquire, who voluntarily made oath and saith, that on Friday the 9th day of November 1832; whilst Deponent was presiding the Court as Chief Magistrate, John William Dupre, Esquire, King's Advocate, acting as Counsel for Francis Godfray, Esquire, Constable of the Parish of St. Helier, requested the Deponent to cause Philip Raoul Lempriere, Esquire, (the Jurat appointed to preside the Court in causes wherein Sir John De Veulle Bailiff is personally interested), to be summoned to attend Court on the ensuing day (Saturday), inasmuch as a cause in which said Sir John De Veulle was concerned, would be brought on for hearing at the suit of the said Godfray. That Deponent accordingly ordered the said Mr. Lempriere to be summoned; but did not give any directions for summoning other Jurats. That on the following day, Saturday the 10th November 1832, a cause having been called over by the said Francis Godfray, as Constable of St. Helier's, against twelve of the principal inhabitants of said Parish, and the Plaintiff having filed exceptions against the Jurats of the day, Philip Nicolle and George Philip Benest, Esquires, and also against the Deponent; and said Plaintiff having insisted that the cause should be decided by the other Jurats then present in Court, Philip Marett and George Bertram, Esquires, the Defendants objected that the cause should be heard, and determined by any other Jurats than those whose turn it was to sit for the day,

and Deponent having enquired by whose order Messrs. Marett and Bertram had attended, Mr. Hugh Godfray, Jun., the Denonciateur brother to the Plaintiff declared, that he had caused them to be summoned; that Deponent observed that such a proceeding was quite irregular, and has since forbidden the said Denonciateur to summon the Jurats in future, without the permission of the Chief Magistrate being first had and obtained.

PHIL. DE CARTERET.

Sworn before me at Jersey this twenty-

seventh day of Dec. one thousand

eight hundred and thirty-two. PH. NICOLLE, Jun., Jurat."

In consequence of the above order, a fresh manoeuvre has since been adopted, which is for the Jurats to exchange days. The following paragraph from the *News*, will explain how it is done: "*On dit* that the thing has been so managed as to have Messrs. Marett and Bertram seated (very conveniently) on the Judicial Bench, to-morrow, to give their opinions on the causes set down for hearing at the Saturday's Court: should this be the case, it will be the fourth Saturday following that these two Justiciers shall have met there together—in turn or out of turn we know not. Mr. Marett was not at his post, at the full Court, held on Wednesday last, *on dit* on account of ill-health. It is singular enough, that the only cause heard was one of private, and not of political, interest. It came to the turn of Messrs. Le Couteur, De St. Ouen, and Marett, to sit and decide on the cases (of no public interest) at the *Cour d'Héritage* yesterday, and of course it comes to the turn of Messrs. Bertram and Le Quesne to sit and give their opinion in the causes to be heard to-morrow—but, *on dit*, that as Mr. Le Quesne sat on the Bench yesterday, in the room of Mr. Marett, Mr. Le Quesne will permit Mr. Marett to sit in his room to-morrow, provided, of course, Mr. Marett is recovered of his illness! We shall see how this will turn out. Should the *on dit* prove correct, the public may again expect some *jugement célèbre*." Singular enough however, Mr. Marett did not sit, as predicted, but Messrs. Bertram and Le Maistre, of Trinity, hence said the Editor, "how it came to be their turn to sit, we could not ascertain, for certain it is, that Mr. Le Quesne ranks between them." This system of packing the Jurats has been carried to such an extent, as to cause nearly all cases of importance to be decided by party men; take for instance the case of *Journeaux v. the Messrs. De Ste. Croix*, which in nine cases out of ten was decided by the Jurats, Marett and Bertram, the invincible opponents of the defendants; also the case of *Thornton*, at the suit of the Crown *v.*

Godfray, *Crown v. Whitfield and Nicolle*, and *Rafter v. Le Cras*; also the case of *Le Breton v. Ennis* which in thirteen times, was heard either by Messrs. Marett, Bertram, Le Quense or Le Maistre, so paired as to exclude nearly all the other Jurats. In *Journeaux v. Messrs. De Ste. Croix*, the Jurat Bertram heard that case seven times in eight, out of his turn!

Justices Itinerant.—Mr. Clark in his “Colonial Law” says, “Up to the reign of Queen Elizabeth, the Justices in Eyre were sent annually or triennially to Guernsey and Jersey, to hear appeals from the Courts of ordinary jurisdiction. Commissioners were afterwards sent at intervals for the same purpose, and were invested also with extensive powers to examine the state of the law, supply defects, correct inaccuracies and retrench what the deliberate assembly deemed superfluous. This custom, however ceased with James I.”

Landlord and Tenant.—When a Tenant decamps from the Island, and leaves his house unoccupied, the Landlord, with the consent and assistance of a Police Officer, breaks into the House, and by writ, distrains the goods for the benefit of himself and other Creditors, but it has of late been held that he cannot claim a priority of payment for more than the amount of the Rent due, and six months to come.

Language.—Notwithstanding English is now generally spoken in the Island, the language of the States and of the Court is a french dialect peculiar to ancient Normandy, and which operates very much to the prejudice of English suitors, whose causes are usually the most important that are brought before the local tribunals, because a sworn interpreter is not appointed. In the case of Godfray on the prosecution of the *Crown v. Robertson* (1838) on the demand of defendant, that the said Godfray, who was a witness, should give his deposition in English, as the former did not understand french, the Court, (Bisson and E. Nicolle) on the conclusions of the Attorney General, overruled the demand, and decided, that it was only Her Majesty in Council who could alter the form of proceeding in this Bailiwick.

Larceny is punished by imprisonment, whipping or banishment to England!

Law Charges.—The following are authorised by an Order of Council, dated 19th March, 1819.

	BAILIFF.	£	s.	d.
For each cause, excepting those for the payment of				
<i>rentes</i>		0	1	6
Do. for payment of <i>rentes</i>		0	0	6

For each cause <i>extra</i> , of admiralty, appeal, or out of term	0	4	0
For the passing, examination and signature of a contract for the sale of <i>rentes</i> , or procuration, &c. ..	0	1	0
Do. extraordinarily	0	5	0
Do. of a contract for the division of property, sale of houses, land, &c.....	0	2	0
Do. extraordinarily	0	5	0
For attendance when the public seal is affixed to a contract	0	0	6
Do. extraordinarily	0	5	0
For the signature of a provisional order, &c.	0	1	0
Do. of a brief of Justice	0	2	0

GREFFIER.

For his attendance at Court in each case, drawing up the decision, and registering the act ; when it does not exceed 100 words, viz.

At the <i>Cour de Billet</i>	0	1	6
At the other Courts.....	0	2	0
With an increase for every 100 words more of.....	0	1	0
For each act drawn from the Rolls of the Court, not exceeding 100 words.....	0	1	0
With an increase for every 100 words more, of.....	0	1	0
For each arbitration, record included, not exceeding 100 words	0	7	8
With an increase for every 100 words more, of	0	1	0

OFFICERS OF JUSTICE.

For each summons, &c., excepting those for the payment of <i>rentes</i>	0	2	6
Do. for payment of <i>rentes</i>	0	2	0
For the summons of each witness	0	1	6
For enforcing a brief of Justice or remonstrance....	0	7	6
For delivering to the defendant an authentic copy of the same	0	2	6
For an arrest of property	0	7	6
For an arrest of person ..	0	10	0
For committing the same to jail	0	2	6
For taking bail	0	2	6
For leading a prisoner to Court, or from Court to jail	0	3	0
For attendance at sales by order of the Court, if in town	0	12	0
Do. in the country.....	0	15	0

REGISTRAR.

For each contract, act, &c., not exceeding 200 words	0	2	3
With an increase for every 100 words more, of	0	1	0

Besides the above *custom* has tolerated the following charges in cases of arrest and confirmation by the Court :

Ordre Provisoire, including 1s. for signing it	0	3	0
Notification to the party and bail	0	5	0
Expenses of the Act, Defendant condemned, Billet			
3s. 6d. Greffier 4s. 6d. Act 2s. 6d.			

LAWYERS.

For every common attendance, from 3s. 6d. to.....	0	5	6
Honoraries, or attendance out of Court, entirely optional.			

ADVOCATES.

Fee for common motion	0	11	0
— for Appeal causes	2	2	0

Law, finisher of, usually called *Hangman*, is appointed by and sworn into office before, the Court. His salary is about £12 per annum, besides lodging, clothing, fuel, candles, &c.

Leases.—These are usually drawn for 3, 5, 7 or 9 years, which is the longest period recognized by Law. The following points are worthy of remark. The Lessor and the Lessee should be properly described, that the one lets and the other takes, the former for himself, his heirs and assigns, and the latter for himself, his Executors, Administrators and assigns. The property, if House or Lands, should be particularised, where situated, and by whom last occupied, and what rights belong to it of egress and regress. The term being consecutive years—commencing at—and ending at—, the Rent, when to be paid, if quarterly, half-yearly or yearly?—the dates of payment,—the kind of money, if British sterling, at what stipulated premium, or any of the Local Notes, that may be guaranteed according to Law; and only in default of payment within a specified number of days after the Rent is due and in arrear, the Landlord to be at liberty to seize any goods or chattles on the premises, to the value of such Rent in arrear and unpaid,—the tenant to have full and unqualified permission to under let, for any part of his term, or to give six months notice, or pay six months rent to annul the Lease. The Landlord to keep the House in good repair, wind and water tight, and to paint it every — years, and such other special covenants as may be agreed on between the parties. [See form of Lease in *Le Cras' Guide to Jersey*.] *Observe*, the lessor must have a right vested in him to let, for if he should be under general procuration, or guardianship, the lease would be void; and if the house or land should be the property of his wife, she must be made a party thereto, or if they have been separated *quant aux biens* she may demise the same, or grant power of attorney to him for that and other purposes. All repairs fall upon the

lessee unless the lessor actually covenants to undertake them, even dilapidations arising from tempest, &c. A lease for a term of years is not binding on the heirs unless they are specially named, and it has been questioned by the Bailiff of Guernsey, if it is binding on them, even then, unless it be registered like a contract of bargain and sale. A lease is void against the Lord of the Manor for his right of possession for a year and a day, if the lessor should die without leaving lineal heirs; and it is also void against the claims of the *tenant* under a *decret*, if he should become bankrupt during the term. Consequently the lessee ought never to pay any rent in advance, unless the lessor guarantees him against those risks. It is true the consideration money might be made a charge on the property by way of mortgage, or be registered against it, but that is poor remedy, for if the lessor should be *insolvent*, the lessee through a creditor would loose his money and be ousted of possession likewise. [See *Bankrupt Laws of Jersey, administration and division of Bankrupt's estate.*] Take the following case for example: Mr. Stoneley took two cottages, situate at Havre-des-Pas, of one Le Breton, a builder, on a lease of three years, and paid the rent in advance for the whole term, taking a receipt for the same. The lease was regularly drawn, signed, sealed and delivered, and the transaction was in every respect a *bona fide* one. Soon after Stoneley took possession, Le Breton died, leaving no lineal heirs, in consequence of which the Lord of the Manor claimed possession of the Cottages for a year and a day. Stoneley compounded the claim, by paying the rent for that year a second time. As soon as the year had expired, in walked the Deputy Viscount who claimed possession thenceforth for ever, for the *tenant*, his heirs and assigns, under a *decret*, Le Breton having died insolvent, and his property having been adjudicated by the Bankrupt Laws of Jersey, subsequent to his death. Thus Stoneley had to pay the rent for that year also a second time, or be ousted instantler. By that operation of law, he lost about £70, which ought to be a warning to all strangers hereafter.

Legacy Duty.—Legacies bequeathed by a British subject, domiciled in Jersey or Guernsey, out of his personal estate, are liable to the Legacy Duty, if the Executor proves the will in *England*, and administers the property there.

Legal Tender.—Although coin of the Realm is the *only* legal money, french coin is not proscribed: it is at the option of individuals to receive it in payment of merchandize, but they cannot be compelled to do so. By an Order in Council in 1812, Bank of England notes were made a legal tender. The

following Act of the States was passed on the 18th Sept. 1834 and subsequently received the royal assent :—ARTICLE 1. That from the first of October 1834, the English Money shall be the only legal money, for payment in the island. ART. 2. A pound sterling shall be estimated at the value of twenty six livres, ancient money of France. ARTICLE 3. No one shall be compelled to receive more than one shilling in copper money.

Letters, franking of.—Letters from England to Jersey and Guernsey, can only be franked by Ministers of the Crown, as the franking privilege of Parliament does not extend to the Islands. See *Franking privilege*.

Letters Patent of themselves severally extend to all the Colonies and British possessions abroad, but certified copies of the same are usually registered or enrolled in the proper offices of registry, conformably to usage for the more effectual maintenance of the rights thereby granted. [Order in Council, Kyan's Patent, Dec. 30. 1836.]

Levies of Money.—The States at present have not the power to order any new levies of money on their countrymen, or even to contract loans without the permission of His Majesty in Council. Formerly a rate was assessed on the inhabitants to enable the States to meet the public exigencies of the Island. Every parish paid its proportion to this rate, according to its relative resources. These proportions have not always been the same. Those now in use is in the Jersey Code of Laws page 275. The proportions in the First Book of the States, 1603, page 1, are different from those of the present day. More than half a century before, the States had already ordered a rate to be levied, the proportions of which were different from the subsequent ones. (See Rolls, No. 2, October 1, 1550.) It is therefore evident, from these precedents, that the States, with the sanction of His Majesty in Council, have the right to change or modify those proportions according to circumstances. This rate has not been raised for many years, but the deficiency is supplied by other funds at the disposal of that assembly. These arise from a small duty on Wines and Spirits to the amount of a few Thousand Pounds a year, subject however to a heavy debt.—[Durell.]

Libel is usually defined to be a malicious defamation of another either by writing or printing, but in Jersey, it has no established definition whatever : everything depending upon who may be the parties at issue, or who may be the Jurats on the bench. It must be observed that questions of libel are not tried by a Jury as in England, but by the Judges, who usually take

those opportunities to square accounts with the public press. The Judges being elected by the people and always in constant communication with them, are strong partizans, and being members of the legislature as well as of the bench, and totally unfit for either, their public conduct often comes under the animadversions of the Journalist, which necessarily gives rise to prejudices either for or against him, and accounts for the diversity of judgments in similar cases. If they find themselves defamed, they do not *seek* satisfaction by an appeal to their brethren on the bench, but *take* it, by giving vent to their feelings, when they decide cases in which the offender may be concerned : thus it is that the justice of the country is prostituted to gratify private revenge. Take the following cases and place them in juxta position. Aubin v. Perrot : this was an action for £500 damages, for having inserted an article in the *Chronique de Jersey*, published by defendant, and which plaintiff alleged contained certain defamatory insinuations against his reputation, and was calculated to cause the adoption of a project of law by the States, for the appointment of a third denunciateur, and which would diminish his emoluments. The Court discharged defendant from the action, and without costs. Godfray v. Le Cras : this was an action for £500 damages, for having inserted an article in the *English and Foreign News*, published by defendant, which went to show, that the duties of Advocate and Constable were incompatible with each other, and that the plaintiff by discharging the duties of one office necessarily neglected those of the other. It was published on the eve of an election, in which the plaintiff was a candidate again for Constable of the Town of St. Helier, and it represented that he, a few days before, had defended a person named Hawkins, for a breach of the law, in selling spirits without a license in the said Town, which was inconsistent with his duty as Constable. It appearing however by the judgment of the Court, in the case referred to, that Hawkins was not sued for selling spirits without a license, but for selling them without having *paid* (!) for the license, and which by the usage of the country was not a breach of the law, so as to render it incompatible for the Constable to defend him as an Advocate, the Court found the article to be a libel, and adjudged defendant to £10 damages and costs. Rafter v. Le Cras : this was an action for £1000 damages, for inserting an Advertisement in the *English and Foreign News*, subscribed by Thomas Bramhall, and which plaintiff alleged contained certain reflections on his character. Defendant required that the author should intervene, which the Court overruled, but

on a similar demand in the case of *Mauger v. Payn*, they granted it! The Court found the article to be a libel and adjudged defendant to £80 damages and costs: but in *Rafter v. Giffard*, for the very same advertisement inserted in the *Gazette du Commerce*, the Court adjudged defendant to only £10 damages and costs! In *Rafter v. Le Cras*, the Court held that the plaintiff had a right to sue either the author or the publisher, but in *Rafter v. Evans*, another action, they decided, that he had a right to sue one *and* the other.

Licences.—In the case of *F. Miller*, 1832, the Full Court decided that although he had obtained a written recommendation from the Lieut.-Gov. as a fit person to be licensed, yet it was necessary that he should be also recommended by the Parish Assembly.

Limitation of actions and suits.—Three years of interruption or discontinuance of claim in *heritable* matters, and one year in possessory matters shall be a sufficient prescription. Any person after having peaceably and without interruption enjoyed during forty years any immoveable property shall not be disturbed in regard to the ownership of the thing possessed: the possession for that period giving a perfect and incontrovertible right according to the ancient custom of the island.—*Code*, 1771. Personal Actions for assault, menace, imprisonment, and defamation or libel, must in Jersey, be commenced within a year and a day, (excepting as regards the latter, if the plaintiff were out of the jurisdiction when the cause of action originated) and in England within four years unless special damages are claimed, in which case the law allows six years, but in an action for words only two, or the party loses his remedy. Criminal prosecutions by indictment are not limited by the common law in either country, but penal actions for forfeitures made by statute must be sued within the time prescribed. Actions for debt on simple contract must in England, Scotland, and Ireland, be commenced within six, in the Isle of Man within three, in France within five, in Jersey within ten, and in Guernsey within thirty years. Suits on special Contracts and those relative to real property are limited in Jersey, the former to ten and the latter to forty years. On Bonds, the ten years reckon from the last payment of interest, and if the Bond becomes a judgment debt by being recognized by the obligor before the Court, the ten years reckon from the date of judgment, provided that it be registered immediately afterwards. In England the recovery of specialty debts (which are always under seal), is limited to twenty years, and by the statute of 3 and 4 William 4 cap. 27, twenty years diverse

possession of real property is a bar to recovery, but where possession is not adverse at the *time of passing the act*, the right is not barred until the end of five years afterwards: persons under disability of infancy, lunacy, coverture or *absence beyond the seas*, and their representatives are allowed ten years from the termination of their disability or death: but under any or all of those disabilities no action can be brought beyond forty years after the right of action accrued. The 19th clause of this act enacts that "*no part of the United Kingdom of Great Britain and Ireland, nor the Islands of Man, Guernsey, Jersey, Alderney or Sark, nor any island adjacent to any of them (being part of the dominions of his Majesty) shall be deemed to be beyond seas within the meaning of the act,*" or of the 21. Jac. 1. c. 16. If a creditor instead of resorting to the estate, in Great Britain, actions the *person* (within this jurisdiction) for arrears of rent or interest *which accrued in England*, payable out of any land or rent, or in respect of any legacy, (assuming the competency of our tribunals to entertain the suit) it must be governed by this act, which provides that the same shall "not be recoverable excepting within six years after the same shall have become due, or next after an acknowledgment of the same in writing shall have been given to the person entitled thereto." (42d clause.) As to the act 9. Geo. 4. cap. 14, "for rendering written memorandums necessary to the validity of certain promises and engagements," although it does not extend to Jersey, as regards contracts which originated within the Bailiwick, it ought nevertheless to be applied to those entered into *England*, and which the statute would bar the recovery of there. The first clause of this act enacts, "that in actions of debt or upon the case grounded upon any simple contract no acknowledgement or *promise by words only* shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the statutes (21. Jac. 1. c. 16, or the 10 Car, 1. sec. 2. c. 6. Irish Act), or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby. The 3rd clause enacts, that no endorsement or memorandum of payment written or made after the time appointed for this act to take effect, upon any promissory note, bill of exchange or other writing, by or on behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of either of the said statutes. The 4th clause enacts that the said recited acts and this act shall be deemed

and taken to apply to the case of any debt on simple contract alleged by way of set-off on the part of any defendant, either by plea, notice or otherwise. The 5th clause enacts "that no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, *unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.*" The 6th enacts "that no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money, or goods upon, unless such representation or assurance be *made in writing, signed by the party to be charged therewith.*"

In *Francis and Urquhart v. Jackson*, (1838) to recover payment of a note of hand drawn in *London*, in the year 1830, for £80, payable by quarterly instalments, commencing on the 14th Oct. 1832, the Jersey Court held the case to be governed by the English law, and that the limitation did not commence running until the first instalment was due, consequently that the six years had not expired, so as to bar the recovery. Judgment for plaintiff.

In *Garrett v. Utterson*, (1835) an appeal from the Deemster's Court, Isle of Man, to the staff of Government, on an action to recover £10 3s 6d for medical attendance and medicines, the Deemster, considering, that the last item only was within the period of three years (the Manx Limitation) from the commencement of the action, had given judgment for the sum of two shillings and six pence, the amount of that item and costs; the Court of Appeal considering,—that inasmuch as the words of the Manx Statute were substantially the same as the English, and that the judgment was in strict accordance with the uniform decisions of the English Courts, whereby it was established "that where all the items are on one side (as was the fact in that case) the last item which happens to be within six years shall not draw after it those of longer standing,"—Affirmed the judgment with costs.

The following decisions of the English Courts are selected from *Harrison's Digest*, with the view to show the application of the statute of Limitations in its various bearings:—The statute bars the remedy only and not the debt. *Higgins v. Scott*, 2 B and Adol. 413. In case of contingency it runs from the time the contingency happens. *Fenton v. Imblers*, 1 W. Black. 354; 3 Burr 1278. A foreigner who always resides

beyond sea is not bound by the statute. *Strithert v. Groome*, 9 W. Black. 723 : 3 Wils. 145. It does not begin to run against a plaintiff who is a Foreigner, until he comes into the realm. —*Id.* But it extends to persons in Scotland. *Rex. v. Walker*, 1 W. Black 286. And see *Campbell v. Stein*, 6 Dow, 116. The creditor's not the debtor's absence from the country takes the demand out of the statute. *Fladong v. Winter*, 19. Ves. junr. 200. If a plaintiff be in England at the time the cause of action accrues, the time of limitation begins to run, so that if he dies abroad and his executor or administrator do not sue within six years, they are barred by the statute. *Smith v. Hill*, 1 Wills. 134. If one plaintiff be abroad, and the others in England, the action must be brought within six years after the cause of action arises. *Perry v. Jackson*, 4 T. R. 516. Where a disability is once removed, and the statute has begun to run, no subsequent disability will stop the running. *Doe and Griggs v. Sheen*, 1 Salu. N. P. 147, n. : *S. P. Cotterell v. Dutton*, Taunt. 826. A Promissory note payable on demand is payable immediately, and the statute runs from the day of the note and not from the time of demand. *Christie v. Fonswick* 1 Salu. N. P. 136, 361.—*Mansfield*. The statute is no bar to an action on a note payable after sight, unless a presentation for payment six years before the action brought be proved. *Homes v. Kerrison*, 2 Taunt. 323.—Where a promissory note was made payable "two years after demand:"—Held that the statute did not begin to run until the two years after the demand had elapsed. *Thorpe v. Coombe*, 8. D. and R. 347 ; *S. C. nom. Thorpe v. Booth*, R. and M. 388. In an action of assumpsit by an administrator upon a bill of exchange, payable to the testator, but accepted after his death, the statute begins to run from the time of granting the letters of administration, and not from the time the bill becomes due, there being no cause of action until there is a party in a capacity to sue. *Murray v. East India Company*. 5. B. and A. 204. The statute of Limitations does not attach to a debt proved under a commission or fiat of bankruptcy. *Ex part Healey*, 1 Deac. and Chit. 36, nor does it affect the creditors of an Insolvent, in respect of the time elapsed since his discharge. *Barton v. Tattersall*, 1 Tam. 378. And where a party receives money in the character of a trustee, the statute of Limitations will not run in his favour. *Ex parte Bolton*, 1 Deac. and Chit. 556. The rule that trusts are not within the statute of Limitations applies only as between trustee and cestui que trust, and will not hold where a claim is made after a great length of time against a trustee by implication. *Townsend v. Townsend*,

Cox. 28. It will be seen by the following case of *Hewlen v. Steizen*, heard before the Court of Common Pleas in 1835, that the Law of Limitation, in a Foreign country, will not bar a recovery in England, unless the parties lived within the Foreign Jurisdiction where the debt was contracted, the whole of the period, which the law stipulated, and the debt became extinguished thereby :—‘ It was an action on a bill of exchange accepted by the defendant in France in 1817, to which he pleaded the French law of limitations, and the question for the Court was, whether or not that law was available for the defendant as an answer to the action in this country. The Court, after referring to the circumstances under which the bill was given, and the fact of the parties having subsequently gone to reside out of the kingdom of France, (the plaintiff to Switzerland, and the defendant to England,) observed that the French law of limitation did not altogether extinguish the debt, but merely barred the plaintiff of his action in a French court if he did not proceed for its recovery within five years, and that only in a case where the parties continued to reside in France during those five years. Here, however, the parties had not so resided ; and at all events the French law not extinguishing the debt it was open to the plaintiff to enforce payment of it, so long as it, continued in existence, according to the law of the country in which the parties resided ; and, therefore, he was entitled to recover in the present action. Judgment for the plaintiff.’

Limitations, Statute of, its applicability in England to Colonial transactions.—Upon the applications of the statute of limitations to colonial transactions, the following case has been decided. An action being brought here [in England] for a debt contracted in India, it was held sustainable, though more than six years had elapsed since the making of the contract. The creditor and debtor were, for some time after the cause of action accrued, resident in Calcutta ; the creditor then returned to England,—the debtor remained in India more than six years, and then returned to England and the action was brought within six years after his return. The action was held sustainable, notwithstanding the lapse of time, and notwithstanding the circumstances that the Supreme Court at Calcutta within the jurisdiction of which the transaction arose, was held under a charter that authorized the Court to exercise the same jurisdiction in civil case as is exercised by the Court of King’s Bench in England at common law. [The Charter granted under 13 Geo. 3, c. 63 s. 13.] For that charter did not alter the effect of the statute of limitations as applied in the courts of

Justice in this country, and therefore, even assuming that the provisions of that statute were transferred to India by the terms of the charter, as auxiliary to the common law, yet according to the statute as it was in force here, it was held that a creditor was not barred by the lapse of six years after the debt arose, as the debtor had been resident out of the realm. [William v. Jones, 13 East, 439, 21 Jac. I, c. 16, s. 7; 4 Ann. c. 16, s. 19.]-[Clarke's Colonial Law.]

Literary property. See *Copyright*.

Litigation.—Persons shall not contract for things or matters in litigation.—*Code*, 1771.


Loan Societies.—The 5 and 6 W. 4. c. 23, intituled “an Act for the establishment of Loan Societies in England and Wales, and to extend the provisions of the Friendly Societies Acts to the Islands of Guernsey, Jersey and Man, passed 21st Aug. 1835, contains this provision : And be it further enacted that this Act shall be deemed a public Act, and shall extend to the Islands of Guernsey, Jersey and Isle of Man, and be judicially taken notice of as such by all judges, justices and others, without the same being specially shown or pleaded.” This Act was transmitted accompanied by an Order in Council, dated Nov. 20, 1835, and registered on the public records, on the 28th day of November following. The preamble of the act, sets forth that as institutions for Loan Funds have been established for the benefit of the labouring classes, it is expedient to give protection to the Funds of such institutions. For this protection, the act provides that the Rules of all such Societies shall be certified, deposited and enrolled at the sessions ; and that the regulations be entered in a book to be kept by the officer of the Society. The property of the Society is to be vested in Trustees. No treasurer, trustee, manager, or other person, is to derive any other benefit from the Funds of the Society, save the payment of a fixed salary. The treasurer to give security, if required by the rules, to clerk of the peace. Bonds, given as security, shall not be chargeable to any stamp duty. The same exemption to extend to all notes or securities. In case of any of the Societies, Officers becoming bankrupt or insolvent, a priority of claim on their assets is given to the Society. The amount of the loan to be advanced to any one person, not to exceed in amount £15. Magistrates are empowered to act summarily on the Society's notes or securities, costs not to exceed ten shillings. No removal of proceedings by certiorari or otherwise.

Lodgings, if taken for a certain term only, require no notice whatever to quit—the tenancy of course expiring simulta-

neously with the term. The effects of a lodger are liable to be seized for rent owing *by as well as to the landlord*, both for rent due and accruing due. See *Debt, arrest for*.

Lotteries.—The States by an Act, dated the 19th Dec. 1836, repealed their act of the 19th June, 1834, which abolished Lotteries in the Island of Jersey; and in pursuance thereof they entered into arrangements to raise money for the public service without the permission of the Crown, by disposing of the said Lotteries to a contractor. Their Act having been transmitted to the Privy Council unknown to them, was disallowed, as may be seen by the following order:—At the Court at Brighton, the 28th of Jan. 1837. “Whereas there was this day read at the Board a report from the Right Honourable the Lords of the Committee of Council for the affairs of Jersey and Guernsey, dated the 26th instant, in the words following, viz:—Your Majesty having been pleased, by your Order in Council, to refer unto this Committee an Act passed by the States of the Island of Jersey, on the 19th of December last, for repealing an Act passed by the said States, in the year 1834, abolishing Lotteries in that Island, their Lordships, in obedience to your Majesty’s said order of reference, this day took the said Act into consideration, and do agree humbly to report as their opinion to your Majesty, that it is not advisable that the said Act should receive your Majesty’s royal approbation. His Majesty having taken the said report into consideration, was pleased, by and with the consent of his Privy Council, to approve thereof, and to order, as it is hereby ordered, that the said Act of the 19th Dec., 1836, be, and is hereby disallowed. Whereof the Governor, Lieut. Governor, Commander in Chief, Bailiff and Jurats, and all other His Majesty’s Officers in the island of Jersey for the time being, and all other persons whom it may concern are to take notice and govern themselves accordingly. (Signed) “WM. L. BATHURST.”

On receiving this order, the States on the 3rd May, 1837, made a humble representation to his Majesty in Council, setting forth that they had a right to pass provisional ordinances to last for three years; that as their act had been passed and registered without any opposition on the part of the Bailiff, who might have put his dissent, or of the Lieut.-Governor who might have placed his veto against it, it had force of law; that as they did not transmit it, they were surprised to find that the act had been disallowed; that they deemed it expedient to use the right they possessed by law to *stay the registry of the Order in Council* which they considered contrary to their privileges and interests until they should have an oppor-

tunity of being heard by his Majesty ; that they had entered into an engagement with the contractors for the said Lotteries, and therefore could not register the said Order without subjecting themselves to pay a considerable indemnity to the contractors who had already disposed of a great portion of the tickets ; and therefore prayed his Majesty to reconsider his said Order, and if their reasons were insufficient, that they may be heard by counsel at the board in defence of their rights, &c. The effect of this was, that the Lords of the Privy Council determined on maintaining their Order, abolishing Lotteries in the Island, but in consideration of the States having previously entered into a contract for the disposal of the Lotteries for the current year, they would not insist on the said Order being put in force until the 31st Dec. 1837, at the expiration of which time, Lotteries should be entirely abolished. And they further intimated that if the States should defer registering the aforesaid order, their Lordships would be under the necessity of sending a peremptory mandate on the subject. A communication having been of the above from the Secretary of State to the Governor, and by him to the States, a motion was made and duly seconded at the sitting of the 20th June, 1837, that the Order in Council should be registered ; this was opposed by the Constable of St. Martin Advocate Godfray, and the Solicitor General Dupre, and referred to a Committee. The result was that the Order in Council was never registered, but an act was passed on the 11th August, 1837, to substitute it, or rather to supersede it altogether, of which the following is a translation : “ Considering that lotteries, raffles, and other games of chance, are very injurious to society, the States have decided to abolish public lotteries, and to prohibit private lotteries, raffles, or other games of chance. Therefore, from the 31st December next, public lotteries are abolished, and from the 1st September next, it is forbidden to sell, or offer, or advertise for sale, or to buy, or cause to be bought, any tickets, parts of tickets, or shares in foreign or private lotteries, raffles, or other games of chance of what nature soever, under the penalty of £10 sterling, for each ticket, part of ticket or share so sold, or offered for sale, or purchased in this country, as well against the seller or person offering for sale such tickets, parts of tickets or shares, as against the purchasers of such tickets, parts of tickets, or shares ; the said penalty is to be applicable a third to the Queen, a third to the general Hospital, and a third to the informer. And in case of the insolvency of the offender, he shall be imprisoned for three months at least, and not more than a year.”  This Act has not

received the Royal assent, nor has the Order in Council been repealed. The consequence is that in England they consider the Act of the States has no force, and in Jersey, that the Order in Council is a dead letter.

Lunatics, or those who are considered incapable of managing their own affairs, may be deprived of the administration of their property, by an order of the Court, which, however, is not granted until incapacity is proved by six principal people, inhabitants of the same parish, and competent to form a judgment. A Curator is then chosen by seven of the nearest relatives of the lunatic, who are equally responsible with the person to whom the trust is committed, for the proper administration of the estate. A commission of lunacy from the Lord Chancellor has force in the Island, especially if the lunatic be an Englishman living in Jersey, and who has real and personal property in England.

It appears that the guardian of a lunatic in Jersey has the power of deporting the sufferer to an asylum at Point-Orson, in France, nor does it seem necessary that he should obtain a warrant from the Royal Court, or a certificate from a medical practitioner. A case of this kind recently occurred, where the person confined was perfectly sane; after a detention of thirteen months he found the means of making known his situation to Mr. White, British Consul at Granville, through whose active interference he was released. Whether this right originated before King John was expelled from Normandy by Philip Augustus of France, or whether it has crept in since the islands were separated from the duchy, we can not at present ascertain; but in either case, such an abuse ought not to be continued, as it places the personal liberty of the subject under the controul of a foreign jurisdiction. Besides, it gives an opportunity to a designing guardian to strip a real or pretended lunatic of his property.

Maintenance.—The remedy on behalf of a wife for a separate maintenance on account of the misconduct of her husband, is by a petition or remonstrance to the inferior Court, claiming her *marriage* and a weekly allowance. Relief is never obtained in any other way. See *Husband and Wife*.

Majority, how to estimate it.—In *Le Gros and others v. Le Breton & others*, before the Privy Council in 1833. A remonstrance was presented to the Court consisting of 10 members, praying that a certain act or decree of that Court might be annulled, or for such other relief as the Court might deem fit. Four of the members were of opinion that the remonstrance ought not to be received, three that the act in question ought to

be modified, and three that the act ought to be annulled, whereupon the Court pronounced judgment that the Remonstrance was rejected. Their Lordships held that the Remonstrance ought to have been received.—[Knapp's Reports.]

Mandamus.—A high prerogative writ, of a most extensive remedial nature, issuing in the Queen's name from the Court of Queen's Bench, and directed to any person, corporation, or inferior court of judicature, *within the Queen's dominions*, requiring him or them to do some *particular* thing therein specified.

Manslaughter is punished by fine, imprisonment, or banishment to England, according to circumstances.

Marriage, publishing banns of.—Under the 26th Geo. 2, c. 33, the publication of the banns must be in the names of the parties according to baptism or reputation. If otherwise, the marriage will be invalid, unless both parties are aware that when the marriage was solemnized a false name or names had been put up. In *Martin v. Couch and Hillman*, 1832, which was an action before the Ecclesiastical Court of Guernsey to cause an opposition made by the said Couch to the publication of the bands of matrimony between Hillman his apprentice and the plaintiff to be set aside. The indentures were made in England, in which the apprentice covenanted not to marry until he was 21 years of age, but he being then 20 years old, had attained his majority, the opposition was set aside, and defendant condemned to the costs.

Marriage with French Subjects out of France.—In the present state of our intercourse with France, it is of great importance to Englishmen, and more especially so to Englishwomen, to know what is the state of the French law respecting mixed marriages celebrated out of France. The Code Civil, Art. 173, declares, that 'marriage contracted in a foreign country by a Frenchman, whether with a Frenchwoman or a foreigner, is null, if it has not been preceded by a publication in France, or by respectful notices (*actes respectueux*) addressed by the Frenchman to his father and mother.' The Court of Cassation, by two decrees of the 9th of March, 1831, made after a solemn discussion in the cases of Julie Fauvel and Flore Dien, has confirmed the principle, that the default of publication in France carries with it nullity of marriage contracted by a Frenchman in a foreign country. Some of the courts indeed have held that notices to parents are not absolutely necessary where the Frenchman is above twenty-five years of age. But the Court of Cassation grounded its decision solely upon the absence of publication. It is clear therefore, that any Englishwoman, or

even any Frenchwoman, who marries a Frenchman in England, without previous publication in France, renders herself liable, upon going to live in that country, to be reduced to a state of concubinage, and to have her children bastardised, if her husband should sue for a dissolution in the French court of law. The clergy generally should be made aware of this law, and should acquaint such of their parishioners with it as may come to them for the purpose of contracting marriages with Frenchmen. On the 6th of Oct. 1831, Mr. B. being above 25 years of age, contracted a Marriage in the Island of Jersey, with an English Lady. On his return to France, he made a formal demand upon his father for an annual allowance of 4000 francs, on the ground that, having himself become the father of a family, his wants were increased, and he required wherewithal to support his wife and children. The father resisted this claim, on the ground that the marriage was illegal; first, because the certificate of the marriage in England, did not state that the bands had been duly published; secondly, because the previous publications in France had been omitted; and thirdly, because no respectful application for consent had been made to him (the father.) These points were tried before the Tribunal de Premiere Instance, at Nantes, and afterwards before the Royal Court of Rennes, on an appeal, both of which decided in favour of the son. The cause was afterwards brought before the Court of Cassation by an appeal, which came to a hearing soon after. The Court after hearing the Counsel for both parties, decided that as marriages in Foreign Countries, between citizens of France and Foreigners, although celebrated in conformity to the laws of the country in which they are contracted are valid only *when the previous publications have been made in France*, and in the case of a Son above the age of 25, *when either the consent of the parent has been obtained, or the prescribed formal applications for such consent have been made*; and as in the case of Mr. B. jun., neither of these requisitions of the law had been complied with,—the judgment of the two provincial Courts must be annulled as contrary to law.—See *Clandestine Acts*.

Master and Seamen.—No person shall be qualified to be a master of a British ship or to be a British seaman, within the meaning of this Act, except the natural born subjects of his Majesty, or persons naturalized by any Act of Parliament, or made denizens by letters of denization, or except persons who have become British subjects by virtue of conquest or cession of some newly acquired country, and who shall have taken the oath of allegiance to his Majesty, or the oath of fidelity

required by the treaty or capitulation by which such newly acquired country came into his Majesty's possession ; or persons who shall have served on board of any of his Majesty's ships of war in time of war, for the space of three years, excepting natives of places within the East India Company's charter. 3 & 4 Wm. 4, c, 54, s. 16.

Militia.—The Royal Jersey Militia consists of five Regiments of Infantry formed into six Battalions. To each Battalion is attached a company of Artillery. The Artillery companies are, upon occasion of exercise, formed into a Battalion which is armed with light 24 pounders ; the whole is armed and clothed in uniform by Government, but do not receive pay. Every inhabitant, from the age of nineteen to sixty-five, bears arms, either as an officer or private ; and all lads, from the age of sixteen to eighteen, are exercised weekly, during the summer months. The Militia Staff consists of an Inspector and Assistant-Inspectors, who are the Adjutants of their respective corps ; the whole Island force is under strict regulations, but though the Governor or Lieutenant Governor appoints the Officers, and has this force entirely under his own command, yet all complaints against individuals are judged and punished by the Royal Court. The Militia is now called the Royal Jersey Militia. It obtained that name by a grant from his present Majesty in 1831, on the Fiftieth Anniversary of its gallant resistance under Major Pierson to the French invasion of the Island on the 6th of Jan. 1781.—[Durell.]

Militia Drills.—In the cause *P. De Carteret, Jun., Esq., Lieut.-Col., North Regiment, v. Joseph Blampied, 1835*, an action for compelling defendant to pay a fine for an alleged absence from drill, in the Parish of St. Martin's. Blampied had resisted, on the plea of non-liability ; but had, in obedience to custom, *consigné* or deposited the amount of said fine, and awaited the decision of the Court. It was stated for defendant that by an order from head-quarters, those men who had reached the age of forty-five, were absolved from Regimental duty. Blampied (being above 48), could claim the privilege of exemption ; but he had not chosen to avail himself of it. He was an inhabitant of the Parish of Trinity—the company to which he was attached, was invariably mustered under the Drillshed of that Parish. He had however received a summons to betake himself to the St. Martin's store, which was six or seven miles from his home, and there be drilled in his manual exercise. Having declined this invitation, he had been called upon by the *Vingtenier* for amount of *defaut*—and his refusal to satisfy the demand, was the ground work of the prosecu-

tion. There was no order on record which compelled a militiaman to serve out of his own Parish. The Attorney General acting said, as to the objection of defendant to being ordered for exercise out of his Parish, it could not hold, for, if such were the law, the collective strength of the Island Militia could not be brought together for the defence of any particular spot which might be threatened with invasion. It was obviously intended that the militiamen, whether singly or collectively, should obey the command of a superior officer, to march wherever duty called. The Court dismissed the defendant, and ordered the *consignation* to be taken up for his benefit, Lieut.-Colonel De Carteret being liable for all costs.

Militia Accoutrements.—For many years past the army clothing and accoutrements of the militiamen have been supplied by the King, so that the rich proprietors are relieved from the expence of supplying their poor neighbours with arms. In the division of estates among co-heirs, the eldest son has still an allowance, which may be estimated at about 30 shillings a year for each musket, which he is liable to furnish. The number of those muskets is according to the value of the respective estates. Most of the principal land holders are officers and serve at their own expence. [Durell.]

Militia Fines.—The 4th article of the militia regulations enjoins that a fine be levied on all individuals serving in the militia, who absent themselves from drill, &c., without a sufficient excuse, and the first article entrusts the Colonels with the duty of seeing that all persons within the prescribed ages perform their personal service, hence fines incurred for absence from drill, &c. can only be remitted on a sufficient excuse, the validity of which the Colonels are to judge. All Absentees without leave from Regiments at their annual inspection are not only fined for the default, but required to attend the general parade for his Excellency the Lieutenant Governor's inspection. Actions to recover fines are heard out of term.

Militia Orders.—The military establishment is dependant on that of England, which originates from a feudal service owed to the Crown: hence a Military Law which has been once recommended by a Military Governor, and confirmed by the Queen, cannot be annulled without a similar recommendation from H. M. representative. Militia Orders are issued by the Lt.-Gov., and have the same force as statute Law, provided that they do not contravene any previous Law of the States sanctioned by Council. By the code of Laws, the Lieut. Governor has the power of granting commissions, and by an order of the Prince Regent in Council of the 26th April 1817, the Governor

or his Lieutenant has the power of granting and annulling commissions, and by the 38th clause of the Military Code, many offices having been abolished, those who had obtained commissions to act in the same, were compelled to serve as privates in their respective districts. In the case of George Hooper, Esq., during the Governorship of General Donn, the Lords in Council decided that the disposal of all commissions being a branch of the executive of the royal prerogative, belonged to the King alone, and the Governor or Lieut. Governor being the immediate representative of his Majesty, had the right to grant or to cancel commissions in the militia, for those commissions, like all other military commissions, only subsisted during the King's pleasure, and further ordered that the commission of George Hooper, Esq., had been legally cancelled, and that he ought to have obeyed the commands of the Lieut.-Governor. In the case of Charles Le Gresley, a private of the 4th Regt. of Island Militia, the Court (May 2, 1832,) decided he was not subject to answer an action of the King's Advocate against him, for fines, for not attending the regular exercise as belonging to the 5th Regiment. His Excellency had by a Militia Order, changed the number of the St. Helier's Battalion; he had made that the 5th and the South East Regt. the 6th. The Court did not recognise his authority in this matter; consequently his Excellency cancelled the order.

Militia Rate of Arms.—By an Order in Council dated the 17th March 1771, entitled "Rules for the Militia," it is declared, that there shall be a rate of arms made in each parish of the Island, in order that all persons who are obliged to contribute to the public charge, should furnish arms and accoutrements according to their means. Those who carry arms for others shall receive from them five sols each day, and there is a general or colonel drill, or mounting guard for 24 hours. In the case of Elias Le Gros, a private in the Royal Jersey Militia, who was actioned in 1838, for payment of the fines incurred, for not attending his duty in the First or North West Regiment, and making three successive defaults; defendant pretended, that he was not obliged to do military service, *having no landed property in the Island*, but nevertheless had intimated his willingness to do it, provided he was told who was to pay him *5 sous d'ordre* per day for his duty, as a substitute. The Court adjudged him to pay the fines, and a penalty of five shillings to the Crown.

Militia Vingtenier, a Messenger whose duty is to collect all fines for non-attendance at Militia drills, and generally to warn the men and attend to what relates to the service within the parish. He has a commission on the fines of 3d. each.

which prescribed what should be done by any foreigner who desired to obtain the privileges of a British subject in that Colony. He was subsequently sent out of the Colony by an order of the Government. The question under these circumstances was, whether any Governor of a Colony could give the rights of a naturalized citizen to a foreigner who came to reside within the Colony. The opinion that he could not was asserted in the Colony, and at first adopted in England on the authority of Lord Coke, who says, [Calvin's Case, 7 Coke, 51.] "The King cannot grant to any other to make of strangers born, denizens; it is by the law itself so inseparably and individually annexed to his royal person (as the book is in the 20 Hen. 7, fol 8,) for the law esteemeth it a point of high prerogative, *jus majestatis et inter insignia summæ potestatis*, to make aliens born subjects of the realm and capable of the lands and inheritances of England in such sort as any natural born subject is." In this passage, which is still good law, no notice is taken of a distinction that has however been raised by subsequent writers, adopted by Colonial Acts, confirmed at home, and also by Acts of the British Parliament itself. That distinction is, that the right of a naturalized subject may be granted to a man in a colony without conferring upon him similar rights in the mother country. So long ago as the 35 Car. 2, an act was passed by the Legislature of Jamaica and confirmed in this country, by which, to encourage the settling of the island, the Governor or Commander-in-chief was authorized under the broad seal of the island, to make aliens "being already settled, or such as shall hereafter come to settle and plant in it, having first taken the oath of allegiance, to be to all intents and purposes fully and completely naturalized." The application of the four last words is shewn by another section, which declares that such persons "shall have and enjoy, to them and their heirs, the same immunities and rights of and unto the law and privileges of *this island*, in as full and ample a manner as any of His Majesty's natural born subjects." A similar act was passed by the Assembly of Antigua in 1702, and confirmed at home May 8th, 1703. That act declared that Protestant aliens desiring to become inhabitants, should be brought before the Governor and Council, and having taken certain oaths and acquired ten acres of freehold land in the country, or a house in any town in Antigua, might acquire and dispose of all kinds of property in the island as if they were natives. In addition to these local acts, the English statutes 13 Geo. 2, c. 7, and 2 Geo. 3, c. 25, made similar provisions as to the naturalization of foreig-

ners in "and British Colony in America," and the 13 Geo. 3, c. 25, declared that all persons becoming His Majesty's born subjects, by virtue of the two preceding acts might hold places of trust and take grants of land from the crown, such not being places of trust or grants of land within the United Kingdom. The act of 1 Wm. 4. c. 53, passed with respect to Lower Canada, enabled foreigners who have been naturalized by the Legislative Assembly, of Lower Canada to vote for members of the Assembly, and to be summoned or elected to seats in it. It was therefore clear that the law had formally recognized the authority of Colonial Governments to grant this limited species of naturalization, and the person improperly sent out of the Colony was allowed to return." [Col. Law.]

We now proceed then to consider what rights are conferred by naturalization in Jersey. It appears by the public records, that both the Court and the States have taken upon themselves to naturalize Foreigners, but by what *authority*, remains yet to be ascertained. Mr. Falle says: "Foreigners preferred to Benefices are excluded from the States unless naturalized: it not being thought safe or prudent to trust strangers with the secrets of the island till they have given good proofs of their affection to the government they live under." And in a note, he says, "The Court here claims and exercises a right of granting letters of *naturalization*, but those extend no further than the Island. For it is not presumed they would entitle persons to the same privileges in England, where 'tis obtainable only by Act or Parliament." Now, Mr. Falle does not tell us *how* the Court came possessed of this *right*; nor does he say how they *lost* it; though it is evident from experience, that the Court has long since ceased to exercise this right: nor does he explain what he means by *naturalization*. It is questionable whether there is any authority on the subject, and if there is, whether after all, it gave the Court the power to make an *alien* a British subject: but whether it was not a municipal regulation, by which the rights and privileges of citizenship were conferred on *strangers*, that is persons who have not acquired a settlement in the Island, such as the Court of Guernsey exercises to this day, when they admit *British* subjects to become *inhabitants* and entitled to the privileges of the native born. [See *Native Inhabitants*.] This conjecture is the more probable from the fact, that the designation Foreigner has been applied to strangers and aliens without distinction, by all the iusular writers, and even down to very late times, the laws intended for aliens have actually been enforced against *british* subjects: such was the ignorance of those who admi-

nistered them ! Shebbeare says " The *States* have the right of naturalizing Foreigners," and in a note gives his authority — " Orders of Henry 7th and Elizabeth," but he does not give the *dates* of those orders, nor does it appear, that he even saw them, but went merely by hearsay. From all that we have been able to learn, we have reason to believe, there is no authority whatever for the right now exercised ; but assuming that there is, we will next consider the *force* and *duration* of the rights which this naturalization confers. Mr. Durell in his notes on Falle's History of Jersey, says : " From the period of the Reformation till within the memory of man, there were generally some foreigners among the beneficed clergy of the Island, and as their names appear in the meetings of the States, it is to be *presumed* that they had been naturalized. It is however *doubtful* whether at the present time, and considering how the law stands in that respect in Great Britain, whether such foreigners would be admitted into that assembly. The *States* often grant acts of naturalization, *but they cannot be good for more than three years* unless confirmed by His Majesty in Council, nor even then, can they extend beyond the precincts of Jersey. It is however a privilege of great importance, which the States ought not to use, but with a great deal of circumspection, that they might not awake the jealousy of the mother country. The right of naturalizing foreigners is very ancient, two of those acts are one of the 11th of June, 1546, and the other of the 5th October, 1549. The latter was to naturalize Maistre Martin Langloys, a protestant minister, who had introduced the Reformation into this Island." In presence of Mons. the Lieutenant for the King in this Isle of Jersey, and the Justice and States of this said Isle, Maistre Martin Langloys, has been sworn and taken oath solemnly to be a true subject, and obedient to our aforesaid Sovereign Lord, King Edward the 8th, by the Grace of God, King of Great Britain, &c., &c.

The opinion of Mr. Durell is perfectly correct. *All* Acts passed by the States expire by lapse of time, at the expiration of three years from the date of their enactment, unless confirmed by her Majesty in Council, in which case they become permanent. But Acts for the naturalization of foreigners are never sent up for the Royal assent, for reasons best known to the States themselves ; it therefore follows, that all letters of naturalization granted by the States become as so much waste paper at the end of that term. For as the Act of the States by which naturalization is conferred, expires, the rights acquired under it expire also : and the supposed British subject relapses into his original state of alienage again. We say *supposed*

British subject, because the Act of the States does not, and cannot, confer the rights incidental to a natural born person. Their Act does not even confer *Denizenship*, in the Island, but only a licence to trade, which is withdrawn again by operation of law, when the Act expires. The time is coming, when those who have been silly enough to purchase lands in the Island, on the strength of such a naturalization, will discover how lamentably they have been deceived. We believe the question of title in such a case has never yet been tried in the Island, because there has been no instance of an alien acquiring sufficient property here, to be worth contending about—when there is, he will soon find himself ousted of it. A *permanent* denization can only be obtained by Letters Patent from the Crown, and that confers the rights of a denizen throughout the Queen's dominions, because Letters Patent have force of Law in all the Colonies and possessions abroad. [See *Letters Patent*.] A Patent is obtained upon an affidavit from a certain number of householders on proof of a certain number of years residence in the country, and the payment of the fees of the Patent office which amount to about £140. Some time ago seven persons were included in one Patent of denization obtained in England, and thus the expence was lessened. The greatest number admitted at one time was in the year 1795, when sixteen were included in the same Patent. The expence then was £22 to each person to enable them to hold land near Windsor under George 3. A Denizen cannot inherit, nor can the issue of a denizen born before denization inherit to him, but his issue born after may. See *Denizens*.

Naturalisation, form of abjuration of Popery.—Foreign Catholics are precluded from being naturalized in Jersey, unless they renounce their faith and receive the Sacrament in the Church of England as by law established. In the case of Mr. Jouault, a Frenchman, who had resided many years in the island, had learnt his trade here, married a Jersey woman, and had served in the island militia for eight years, and who in 1834 petitioned the States to grant him an act of naturalization, it was decided that inasmuch as he had no certificate from the Rector of the parish, to show he had taken the Sacrament of the Lord's supper in the Protestant communion, he being a Catholic, it could not be granted. The Attorney-General, Le Breton, held that the States were competent to grant *naturalization to an alien without a certificate of conformity*. The House divided, when the petition was rejected by a majority of thirteen. The following is the form of abjuration, taken from the documents presented

Plaintiff actioned Defendant on a bill of exchange for £30, drawn by Defendant on 7th Sept. 1829, on Jas. Poingdestre and Co., London, at 3 days sight to the order of Plaintiff, who gave value for it. The Bill was accepted on the 21st, payable at Bonds, Son and Pattisals, and consequently the 27th, falling on a Sunday, became due on Saturday the 26th. It so happened that the acceptors failed on Monday the 28th, on which day the Bill was presented for payment and protested on account of being dishonored. The objection to the liability of the Defendant was on two separate grounds. 1st. That the Plaintiff had not used proper diligence in procuring acceptance to the Bill; and 2ndly, That he had not presented it on the day it was due, in consequence of which laches he had exonerated the Defendant as drawer. The Court found for the Defendant. In the case of *Anley v. De La Haye*, 1830, Defendant was sued as *Indorser* to a bill for £55. He pleaded that he had satisfied the demand and wished to be allowed to prove it. The Court rejected the plea and found for the Plaintiff.

Notice to Quit should be given in writing and served upon the party before twelve o'clock on the quarter day, in the presence of two witnesses. See Form of Notice, in *Le Cras' Jersey Guide*.

Nuisances may be removed by applying to a Centenier, by whom a fine is imposed according to the nature of the case. In *King v. Dutot*, the Court decided that the Chief of Police was not bound to remove or cause to be removed a nuisance from a Church-yard, as the Church wardens alone were bound to keep that place from profanation. Encroachments on the Queen's high road may be removed by order of the Court which annually holds views in the parishes, and is conducted by a sworn jury. It can proceed summarily and punish by fine.

Oaths may be administered either by the Lieutenant Governor, Bailiff or Jurats: a charge of a shilling is sometimes made. The party swearing holds up his right hand, while a solemn abjuration is read.

Oaths and Affirmations.—The 5 and 6 W. 4. c 62, intituled "An act for the more effectual abolition of Oaths and Affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths," was transmitted from the Council Board, in Feb. 1838, and ordered to be enregistered; the Act being *general* in its operation, the Order set forth that the registering

was not essential to it, but that only Her Majesty's subjects may have knowledge thereof and that they are bound thereby. The full Court nevertheless held that inasmuch as the Islands were not *specially named*, in the Act, they were not bound by it, and therefore refused to register it, thus treating both the Act and the Order with contempt.

Oath, refusal to administer.—In the case of one Romeril, a prisoner in the gaol of Jersey, in 1833, who wished to obtain a writ of Habeas Corpus, to remove himself to England, the Jurat Le Quesne refused to swear him to the truth of his statement of the facts, until certain words which set forth that his imprisonment awarded by the Court, was both illegal and oppressive, were expunged from the affidavit; thus depriving him of the power of showing *grounds* for his complaint.

Officiers des Vraies.—Persons appointed by the Parish Assembly for three years, to superintend the distribution of *vraic* in proportion to the quantity of land each inhabitant has in cultivation. They receive a certain number of lots of *vraic* as a compensation for their services. They take the following oath:—"You promise and swear by the faith and oath that you owe to God, that well and faithfully you will execute the duty of Officer for the preservation and division of *Vraies*, according to the orders and regulations of Justice at the harbour of — in the Parish of —."

Officiers du Connétable are persons elected by the parish meeting as police officers: their duty is subordinate to that of the Constable, Centeniers and Vingteniers. The following is a translation of their oath of office:—"You promise and swear by the faith and oath that you owe to God, that well and faithfully you will execute the charge of Constable Officer in the Parish of —; that you will assist the said Constable or Centeniers at all times, and when you shall be required, and perform all the duties which appertain to the said office." In the case of Thomas Germain, Bertram and Le Quesne held that the Master of a vessel could not be compelled to serve any Parochial office, and in the case of Thomas Bichard, the Court held that a party who had filled the office once, could not be compelled to serve again.

Officers, responsibility of.—The Deputy Viscount and Denunciateurs on levying an arrest on goods and chattels are responsible for the same, if they should be abstracted or destroyed after the seizure has been made.

Offices in the Colonies not to be void on the demise of the Crown. See *Patents, renewal of*.

Opposition to the Sale of Property, lodging of.—A person having a claim against another possessed of real property, can lodge a caveat in the hands of the Bailiff against his passing any contract for the sale thereof, until the party has been heard on all his reasons and pretensions against the same. The fee is 5s. British, which must be paid at the time. An opposition formerly lasted 3 months, but now only 6 weeks, when it must be renewed or else it expires through lapse of time. In the case of the Crown v. Vincent, 1838, the Attorney General having lodged an opposition against the defendant's selling his property *a bailleur a fin d'heritage*, inasmuch as he was surety for one Perchard for payment of £105 accruing due to the impost, defendant interjected an Order of Justice, claiming £200 damages, when the inferior Court, by the casting vote of the Lieut. Bailiff Marett, decided, that the opposition was well laid.

Oppressions, Crimes and Offences, committed by public officers abroad.—With respect to the trial in England of crimes committed in the colonies, it is a general principle of the English law that crimes are *local*, from which it follows that those committed in the colonies or elsewhere out of the realm cannot be tried in any English court of justice; [Rex. v. Munton, 1 Esp. 62, before the passing of the 42 Geo. 3, c. 82, cited in Rex. v. Johnson, 6. East. 590.] but by the 11 and 12 Wm. 3, c. 12, it is provided that if any governor, or commander-in-chief of any plantation or colony within His Majesty's dominions beyond the seas shall be guilty of oppressing any of His Majesty's subjects beyond the seas, within their respective governments or commands, or shall be guilty of any other crime or offence contrary to the laws of this realm, or in force within their respective governments or commands, such oppressions, crimes and offences shall be tried in the Court of King's Bench in England, or before such commissioners and in such county of the realm as shall be assigned by His Majesty's commission, and that the same punishments shall be inflicted as are usually inflicted for crimes of the like nature when committed in England. And by a subsequent statute, 42 Geo. 3, c. 85, it is enacted that *any person holding a public station, office, or employment out of Great Britain*, and guilty of any offence in the exercise of his public functions, may be tried in the King's Bench, either on an information exhibited by the Attorney-General, or an indictment found; and all persons so offending and tried under this act or the statute of William, shall receive the same punishment as is inflicted on similar offences committed in England, and are

also liable, at the discretion of the Court, to be adjudged incapable of serving His Majesty or holding any public employment. [8 East, 31 ; and as to India see the East India Bill, 13 Geo. 3, c. 63, s. 39 ; 24 Geo. 3, c. 25, s. 64, et seq.] As to how, evidence is to be obtained, to substantiate a charge ; See *Evidence as to Colonial transactions, how procured in England*, p. 168.

Order in Council, refusal to register.—"Whereas his Majesty hath received information, upon the oaths of Philip Le Geyt, Esq. the Lieutenant-Bayliff of the Royal Court of Jersey, William Dumaresq, Esq., one of the Jurats of the said Royal Court, and Receiver of his Majesty's Revenues there, John Le Hardy, Esq., his Majesty's Procureur, and the Reverend Mr. Francis Payne, Dean of the said Island, of the riotous and tumultuous proceedings of many of his Majesty's subjects, inhabitants of the said Island of Jersey, upon publishing his Majesty's Order in Council of the ninth of July, 1730, confirming a former Order in Council, of the twenty-second of May, 1729, made and issued pursuant to a representation of the Estates of the said Island, presented to his late Majesty, on the 16th of Jan., 1726, for remedying the ill state of the coyné current there ; and likewise of the behaviour of Lieutenant-Colonel George Howard, Lieutenant-Governor of the said Island, in not having given the said Lieut.-Bayliff and others, the protection which his Majesty's service required, nor acted according to the duty of his post, in supporting his Majesty's Royal authority, and preserving the peace of the Island, by means whereof, and of the great outrages then committed, the said Philip Le Geyt and others, above named, together with Charles De Carteret, Nicholas Dumaresq, and John Pipon, Esqrs., three other of the Jurats of the said Royal Court, who were all of them, (except the Dean) by virtue of their offices, charged with the publishing his Majesty's said Orders in Council, and who were on account of discharging their duty in that behalf, so insulted and threatened, that for the safety of their lives they were all obliged to quit the said Island, except only the said Nicholas Dumaresq. And whereas, upon full examination into this matter, the said Lieut.-Bayliff and others, who gave the said information, have verified the several articles therein contained, whereby it appeared that the said Lieut.-Colonell Howard, Lieut.-Governor of the said Island, had been guilty of a great breach of his duty, and had grossly neglected to maintain his Majesty's Royal authority, and to support the civil government of the said Island, his Majesty hath, for such his offences, ordered him to be re-

moved from his said post of Lieut.-Governor, and it having been given in evidence, in the course of the said examination, that Philip Patriarche, Esq., and several other Jurats of the said Royal Court, and also Elias Dumaresq, his Majesty's then Deputy Advocate, as likewise several members of the Estates, had not acted agreeable to that duty, which by their several stations, they owe to his Majesty, but had, in an unwarrantable manner, obstructed the execution of his Majesty's aforementioned Orders in Council; We do, therefore, in his Majesty's name, and by his express command, hereby signify his Majesty's high displeasure at such undutifull and unprecedented proceedings, and do hereby require that they do not, for the future, upon any pretence whatsoever, presume to disobey, or in the least delay complying with any order of his Majesty in Council. But do pay and cause to be paid, an exact, speedy, and unanimous obedience to the same, as they will answer the contrary, at their perill. And his Majesty being well pleased with the dutyfull behaviour of the said Philip Le Geyt, William Dumaresq, Charles De Carteret, Nicholas Dumaresq, John Pipon, and John Le Hardy, Esqrs., and of the Reverend Mr. Francis Payne, and of such others of the members of the Estates, as have paid a due obedience, and shewed a ready compliance to the carrying his Majesty's Orders in Council into execution, we doe also, in his Majesty's name, and by his express command, signify his Royal approbation of such their behaviour. And to the end that this signification of his Majesty's pleasure in the premisses may be made known to all persons concerned, you are to communicate the contents hereof to the Estates of the said Island, to be assembled for this purpose. And you are likewise to cause the same to be forthwith entered in the publick Registry of the said Royal Court, that the same may remain upon record in the said Island. And so we bid you farewell, from the Court at St. James, the eighth day of April, 1731.—Your loving friends,

WILMINGTON, P.

ILAY,

ARGILL & GREENWICH,

COBHAM,

DORSETT,

CARTERET,

MARCHMOUNT,

RAYMOND.

“ To the Bayliff and Jurats of his Majesty's Royal Court of Jersey.”

Orders, Warrants, and Letters, not to be executed without leave of the Court.—The following is a translation of an act of Court, 28th July, 1601, forbidding the Viscount and Denunciators from serving any order or process, without first obtaining the permission of the Court. “Whereas various com-

missions have been obtained through the importunity of several persons from their honours; the Lords of the Right Honourable the Privy Council, whereby several of her Majesty's subjects are greatly harrassed, contrary to the privileges of the island; and avail themselves of, and abuse of the ministerial functions of the Viscount or Denunciator, the whole contrary to their office, which depends entirely on the Bailiff, and the Magistracy. For these causes it has been found expedient that they shall not execute any orders, commands or warrants, by the command or request of such commissions, without the permission and leave of the aforesaid Bailly and Magistracy.

Orders, Warrants and Letters, not to be executed until presented to the Court for registry.—Conformably to a certain Order of the King and Council of the 21st of March, 1769, enrolled by the States on the 3rd of July following. "The laws and privileges of the island of Jersey are confirmed as of ancient times, and no orders, warrants or letters missive of any sort shall be put into execution within the island, till after having been presented to the royal court, in order that they may be registered and made public; and in case any such orders, warrants, or letters missive, shall be found contrary to the charters and privileges, or burthensome to the said islands, the registry, publication, and execution, may be suspended by the royal court, until the case has been represented to his Majesty, and his will and pleasure on the same be signified. And as to acts of parliament, in which the island is named, and in which the inhabitants are interested, they are to be specially set forth under the great seal of England, and forwarded to the said island, to be there registered and published, in order that the people may have full knowledge of them so that they may conform themselves and avoid the penalties of transgression.—Code, 1771. It will be seen by the above that the Court can *suspend the execution* of all Orders, Warrants and Letters, but not of Acts of Parliament in which the island is named: and though it is desirable that the latter as well as the former should be registered and published, in order that the people may have full knowledge of them, and avoid the penalties of transgression, and it is usual to require, such formalities to be observed, yet inasmuch as the Court of Jersey was wont to withhold such formalities, under the erroneous opinion, that by so doing they restrained the authority of Parliament, and rendered their acts a dead letter, the Privy Council has declared in all their late orders, that they shall be no longer deemed essential to an Act. See *Acts of Parliament, their registration not essential.*

Ordinances passed by the States are *not* certified by an officer as containing nothing that is inconsistent with the constitution, or those laws of England which have force in the island, as is usually done in the Colonies and other dependencies of the Crown.

Ordre Provisoire or writ of arrest may be obtained on payment of two shillings and sixpence, and for the arrest ten shillings whereon a party is held to bail, for debts from two shillings to any amount upwards. This document may be had and kept for general use, on delivery of it to an officer, and proves a ready instrument for immediate arrest. La Caution or Bail is in general easily procured by persons settled in the Island, for their appearance to answer the action, but not for payment of the debt. The following is a translation of the Writ or Warrant, called *Ordre Provisoire*, (Provisional Order) by which persons and property are held to bail :—" It is permitted by justice to A. B., to cause to be seized, arrested, put in execution, and to be sequestered, if it is required, the most apparent property of his debtors, in all places where the same be found, and particularly upon his lands, to be applied to the payment of that which will be found to be rightly and justly due to him. As to strangers or persons expatriable (not possessed of real property) he may cause to be arrested, their goods, vessels, merchandize and effects, or themselves in person, if they do not make good their bargains, agreements, debts or promises, or if they do not give sufficient bail to fulfil them ; which shall be executed by the Viscount or by one of the Denunciators, Officers of Justice, or, in their absence, with respect to the said expatriable persons, by the Constable, or by one of the Centeniers of the parish.—Reasons reserved.

" Given at St. Helier, this day of 18 .
(Signed) " J. DE VEULLE, Bailiff."

Pardon and Mitigation of punishment.—Pardon is a prerogative of the Crown, but may be granted by Act of Parliament: the former acquits a person of all corporal penalties and forfeitures annexed to his offence, but the latter restores the purity of his blood, after being corrupted, and puts him in his original position ; in subsequent proceedings the former must be specially *pleaded*, but the latter need not, for all persons in authority must *ex-officio* take notice of it. There are but few cases ever submitted to the merciful consideration of the Crown in the Channel Islands, either for pardon or mitigation of punishment, because the Courts of Jersey and Guernsey generally usurp that prerogative themselves. Take the following case for example. In 1832, a black boy was convicted in

Guernsey of robbery and arson. There was no doubt in the minds of the Bailiff and Jurats, that the evidence adduced, brought the offences home to the prisoner, and what is equally important, that the *law was clear and express*, and that it had in such cases provided no other punishment than death; but as there were some mitigating circumstances, the King's Procureur would not draw his conclusions according to law, and recommend the prisoner to mercy; but asked that the prisoner might be condemned to receive 200 lashes, by the hand of the hangman, to be banished for ever from the bailiwick, (that is transported to England) and to have his property, if any, confiscated. It appears that he entertained doubts of his Majesty's clemency, as if a recommendation of the Court to the Throne, was a mere farce, and that the prisoner would be hanged as a matter of course, without the merits of his case ever being enquired into: the Procureur, is reported to have said: "for the number of fires which had been lately caused by incendiaries in England, might lead his Majesty to refuse mercy to the prisoner." A greater libel on the prerogative of the Crown could not be uttered! The Bailiff, who is reputed to be a sound Lawyer, as well as a humane man, was for administering the law, as he found it, let the Procureur conclude what he would; and he did not hesitate to declare, that "the prisoner ought to be condemned to death, but recommended to mercy, *as the Court could not inflict a lesser punishment than that provided by law*. He did not foresee the danger mentioned by the Procureur, as the whole of the circumstances would be submitted to his Majesty." The Lieut.-Bailiff, very justly observed.— "The laws of which *we are only the organs*, punish such crimes as those with which the prisoner is charged, with the utmost severity. His Majesty alone by his Royal prerogative has the right to commute the penalty imposed by the laws, he is still the source of mercy, and I have no objection to give the prisoner the chance of obtaining it from the King, by forwarding to him a statement of the proceedings, and also to add the circumstances favourable to the accused, such as his age, his confession, and the alarm he gave to his master's family, whereby they had an opportunity afforded them of saving their lives, which would not have been the case if he had not called them. But with regard to myself, I have not this power, my duty is, however painful it may be to me, to conform to the law, and therefore I must pass sentence of death upon the prisoner; the confiscation of his property, if he have any to his Majesty, or to those to whom it may appertain. and costs, save and excepting his Majesty's pardon." Mr. Peter Le Pelley

said : " the precedent of the Attorney-General, he considered as a dangerous one ; he wished he could acquiesce in it, but he could not. The King only could mitigate the law and believing that the prisoner was guilty he would be for condemning him to death, in the mean time recommending him to mercy." Mr. J. Le Messurier and Mr. J. Hubert supported these opinions. " So far so good." The *News* from which we take the case, observed " But what will the reader think, when he is told that five magistrates took upon themselves a legislative as well as a judicial authority ; that they actually made a law for the case, because they supplanted it, by individual propositions of what the punishment should be, the recognition of which principle unties the bonds of the social compact, renders a Court of Justice, a mere mountebank, by making the *will* of a magistrate the law, & damns the security of the public weal ! The facts are, Mr. John Guille and Mr. John Le Marchant *proposed* that the criminal should be imprisoned two months, and Mr. H. O. Carré and P. B. Dobrée, three months, and each of them, that he should be afterwards transported for life (perhaps to Southampton, Weymouth or Plymouth, and there set at liberty) ; in the latter opinion, Mr. W. Collings likewise joined, although he had previously refused to give any judgment, on account of his relationship to the prosecutor, which was a very proper feeling ; but it would seem that in Guernsey a Jurat may recall his objections, and on second thought make that legally right, which at first thought, was morally wrong : because, doubtless the end would sanctify the means. There being four Magistrates who gave judgment agreeably to, and four contrary to, the law, the Bailiff whose sentiments were known, having no vote, except a casting one, was prevented by a stratagem from using it ; which was, that Mr. Collings should recall his scruples, join in the latter opinion, and thus obtain a majority, and compel the court to inflict a lesser punishment than that provided by law, which the Bailiff had positively declared it could not do ! We have often heard of an English judge sending a jury back to reconsider their verdict when it has been contrary to law, and it appears that in the present case, the Bailiff again asked Messrs. Guille, Le Marchant, Collings, Carré and Dobrée, their opinions, when they all concurred in sentencing the criminal to " three months solitary imprisonment and to perpetual banishment." [Mind, that is transportation to England !] How far it was consistent with his duty to allow this judgment to be recorded as that of the court, after what he had stated, we leave him to determine ! We may be told that the Guernsey Court is a court of equity,

as well as of law, but who shall tell us it has a right to judge according to equity, save and except in such cases as where there is *no law*? We do not for a moment mean to question the *motives* of the Magistrates, or any other person; that they were merciful, all must admit; but the precedent is dangerous, and the principle now tolerated on the plea of mercy, may yet be demanded on the side of injustice, therefore with much deference to their mantles, if they wear any, we think that if they had condemned the prisoner to death, and recommended him to mercy, his life would have been quite as safe in his Majesty's hands as in their own; and alas! the public would have been spared the painful reflection—that where the *will* of the magistrate is made the law, the people are but slaves? [News, March 22, 1832.]

Parish Accounts.—In the case of Mr. Du Heaume and the parish of St. Ouen, in an appeal before the Lords of the Council, the Master of the Rolls pronounced the judgment in the following terms:

“The Court in Jersey confirmed the proceedings of a parish meeting under the following circumstances. The Constable of the Parish had convened the meeting for the purpose of rectifying and levying a rate; but previous to this business taking place, the Constable was required by the meeting to produce his accounts in order to shew that the rate was necessary; with this, however, he refused to comply. The principal question in this cause is to ascertain, if the Constable, having been called upon to pass his accounts previous to the rectification and levying a new rate, and having refused so to do, has acted in conformity with the law. As there is no Order of Council for regulating the passing of the Parish accounts, the question ought to depend on the justice of the case, and on the decisions in like cases of the Court of Jersey.

“1.—As to the justice of the case, it appears to me very unreasonable that a new rate should be levied before the Constable has proved its necessity to the parish meeting; which can only be done by passing his accounts: and in fact the Constable himself recognized this principle; for he produced a memorandum which he called an account; but that was not sufficient: such a scrap of paper could not be deemed an account. So much for the first point. Now 2^o, how does this case accord with the judgments of the Court? In that of the Constable of St. Heliers the Court of Jersey decided that the Constable *should* pass his accounts. This judgment ought to be considered either as a new law, or as declaratory of the state of the old law. But the Court *cannot make a new law*,

and consequently it must be taken to have pronounced that according to the law the Constable must produce his accounts. There is another reason which would have induced us to reverse the judgment of the Court below, without entering into the considerations which I shall now explain ; but we think it of great importance that the law should be clearly declared.

"They admit the deposition of witnesses who had signed an engagement to indemnify the defendant against the costs of the action. It is attempted to establish a difference between these witnesses and the committee which they had named : but I cannot discover the smallest reason to justify this distinction. These witnesses ought not to have been admitted. The judgment of the Court below must be annulled, but we cannot allow the costs of appeal against the party in whose favour that Court has decided."

Parish Assemblies.—The following Act passed by the States, March 31, 1804, received the Royal assent, July 31, and was registered on the rolls of the States on the 11th Aug. following :

Article 1.—The Magistrates and Officers of the Royal Court, namely, the King's Procureur General, Viscount, King's Solicitor General, and the Greffier ; the Rectors, (or the Vicar duly appointed by the Ordinary, and in the Rector's absence, if out of the Island, or during illness,) and the Constables and Centeniers shall have a right of sitting and voting as principals in the Parish Assemblies.

Art. 2.—Those who have fulfilled the offices whether of Constable or Centenier, shall have likewise a right of assisting and voting at the Parish Assembly, although they may no longer be in office. The Procureur of the public property, the Churchwardens, the Vingteniers, the Constables' officers, and the Collectors of the Poor, shall have that right only during the time they are in office.

Art. 3.—The number of principals who shall be members of the Parish Assemblies, is regulated for every Parish as follows, viz :

For the Parish of St. Helier, all those who pay a rate of twenty quarters and above.

For the parishes of St. Ouen and St. Saviour, all those who pay a rate of fifteen quarters and above.

For the parishes of St. Brelade, St. Peter, Grouville, St. Martin, St. Lawrence and St. John, all those who pay a rate of twelve quarters and above.

For the parishes of Trinity, all those who pay a rate of ten quarters and above.

And for the parishes of St. Clement and St. Mary, all those who pay a rate of eight quarters and above.

Art. 4.—There shall be twenty four Constables' officers in the parish of St. Helier, of whom six at least shall be of the country Vingtaines ; fifteen officers in that of St. Brelade, and twelve in each of the other parishes. In the parishes where there are at present more than this number, there shall be no new selection before the number has been reduced conformably to this Article. They shall remain in office, in the parish of St. Helier four years only, and in the other parishes seven years, and at the next Parish Assembly, after the expiration of the term of office of any of them, they shall proceed to a new choice. If, however, the Parish Assembly can find no person fit to replace the Constable's officer, after the expiration of his term, he shall be subject to serve again, if he shall be re-elected.

Art. 5.—The Constable's officers who shall have attained the age of 65 years, or who shall have become incapable, through infirmity, to finish their term of office, may obtain their discharge before they shall have served the time prescribed for any of them.

Art. 6.—The office of Procureur to the Public Property, in each parish, is limited to three years, after which time a new election shall be made at the Parish Assembly, according to custom.

Art. 7.—The Rector, or the Vicar duly appointed by the Ordinary, and residing in the parish, shall convoke and preside the Parish Assemblies for Ecclesiastical affairs, and the Constable or Chief of Police shall convoke and preside the Parish Assemblies for all other business, both summoning, before the publication, the members of the States residing within the parish, and taking their opinions as to the day on which it shall be held, regard being had to their public avocations.

Art. 8.—Ecclesiastical affairs are as follow : choice of officers of the Church, Churchwardens, and the examining and approval of their accounts, the disposal of the seats in the church, repairing the church, burial ground and parsonage house ; the disposal of rents *du trésor*, charity rents, and other property belonging to the *trésor*, or to the charity ; and the choice of Clerk, Sexton and Schoolmaster.

Art. 9.—Each president of the Parish Assembly shall be bound to convoke a meeting within the eight days, from the time he shall have been requested so to do, by four or more principals of his parish, should the requisition be made in

writing, bearing a date, and specifying the object for which such convocation is requested; and the requisition should also be delivered to him on the Wednesday at the latest, in order that he might have time to convoke the said Assembly for one of the days of the following week

Art. 10.—Every time that a President of an Assembly shall convoke a meeting of the principals and officers of the parish, he shall be bound to mention in the summons of convocation the object for which he calls the said Assembly; and any other subject shall not be discussed save and except those which concern the public safety and the care of the poor.

Art. 11.—Every Parish Assembly shall be notified by the Clerk in the Church immediately after the service is over, on the Sunday, and in case there shall be no service on Sunday, and that some urgent business requires the holding of a parish meeting, the meeting shall be summoned by the Vingteniers; but a Parish Assembly shall not be held on the day of which notice is given, nor on the following day, excepting for affairs of public safety.

Art. 12.—At every Parish Assembly duly convoked and held, the President shall be bound to put before the meeting every motion duly made by a member, and seconded by another, and to gather the opinions on the subject.

Art. 13.—Every Vingtenier in his Vingtaine, and in the absence of the Constable and Centeniers, shall be bound to signify and to cause the peace to kept, whenever and where-soever it shall be required, and shall likewise have a right to call in the assistance of the Constable's officers, and shall be bound to seize all disturbers of the public peace and infractors of the laws, and to present them without delay to the Chief of Police of his parish.

Art. 14.—The present Regulation shall not be deemed to derogate the right of the Seigneurs of the Fiefs of St. Ouen, Rozel, Samarès, and Trinity, to vote in the Parish Assemblies, by means of their Guardians or Procureurs, as in former times.

JOHN DE VEULLE, Greffier.

Parish Clerks, are elected by the Vestry, but at this moment it is an undecided point, whether the Parish Officers, who acquired the right of suffrage in those Vestries by an Order of Council of the 31st of July of 1804, have, consistently with the 28th Canon, the further right of voting at these elections.

Parish Officers are chosen by the Parish Assembly.

Parish Registers. See *Baptismal Registers*, p. 107.

Parish Vestries.—By an Act of her present Majesty, passed in the first year of her reign, intituled “an Act to alter the mode of giving notice for holding of vestries, of making proclamations in cases of outlawry, and of giving notices on Sundays with respect to various matters, dated 12th July, 1837,” it is unlawful from and after the 1st of Jan., 1838, to make or give any proclamation or other notice for a vestry meeting, or any other matter in any church or chapel, during, or after Divine Service, or at the door of any church or chapel, during or after Divine Service, or at the door of any church or chapel, at the conclusion of Divine Service; but all such notices from and after the said 1st January, 1838, are to be fixed on or near to the doors of all churches and chapels within the parish or place for which such notice may be required. Every person offending against the act are subject to an indictment for a misdemeanour, and the act has force in Jersey. It was transmitted to the Islands both of Guernsey and Jersey by an Order in Council in Nov. 1837, and was registered in Guernsey, the Court however passing an Ordinance to modify some part of it. The Order in Council and the Act were laid before the Jersey States on the 27th Dec. 1837, and by them lodged *au greffe*, and a Committee named to examine them and to make a report thereon, which is the mode they usually adopt under the persuasion that it strangles the legislative enactments of the mother country! It is worthy of remark, that no time was specified for making the report, and although eighteen months have since elapsed, no report has been made, it being understood that none was required! In the mean time they hold that both the order and the act are a dead letter.

Parochial Officers.—The principal officer is *Le Connetable*. Under the *Connetable* are two *Centeniers*: these were formerly prefects over one hundred families. In the absence or indisposition of the *Connetable*, the senior *Centenier* performs his duty, and represents him in the assembly of the States. There are likewise several *Vingteniers*; each of whom has the charge of a particular *vingtaine*. There are also a number of other policemen, called *Officiers du Connetable*: their duty is subordinate to that of either of the before mentioned officers. Their employment is nearly similar to that of an English constable. There are, moreover, two *Procureurs du bien public*, whose office is to support any parochial law suits.

Parsonage houses, repairs of.—The Churches and Parsonage houses are kept in a state of repair out of the *Trésor* or Church fund, as regulated by the Code of Laws (*Article Trésor*, p. 319). It was formally disputed whether the outhouses and

offices of parsonages in this island ought to be kept up at the expense of the Rector. After some tedious litigation between the Rector of St. Clement and his parishioners, the question was finally determined by an Order in Council about the end of the last century, in favour of the Clergy. [Durell.]

Partners.—In private partnerships, each partner is bound and limited towards others by deed, but their responsibility to the public cannot be limited by any agreement whatever, for each is responsible for the debts contracted by the firm even to the whole extent of his fortune; nor can any one partner transfer his share to another, or introduce a new member into the partnership, without the consent of the firm, but each may upon proper notice withdraw from the firm, and demand payment from them of his common stock; in which case a dissolution of partnership follows, which must be brought home to the knowledge of the public, otherwise their liability continues.

Partners, by Joint Stock.—There are several Joint Stock Banking and other companies established in the Islands of Jersey and Guernsey.—Some of the Banking Companies in Jersey comprise upwards of one hundred shareholders; none of those companies have ever been incorporated, either by Charter, or by Act of Parliament, or by Act of the States; hence, all are subject to the operations of the law as regards private partnerships, which will ultimately cause very serious inconveniences to the parties. We understand that the shares of many of the original proprietors have been transferred, without any legal dissolution of partnership, and without notice being given to the public, which may at no distant period give rise to much contention.

Passengers.—Regulations for conveyance of by ships, see 5 and 6 W. 4, c. 53.

Passengers and their Baggage conveyed by Boatmen and Porters.—The following is a translation of the Act of the States on this subject. It is a provisional law, and consequently has not been sent up for the Royal assent:—At the States of the Island of Jersey, on the 28th day of Feb. 1839. Numerous complaints having been made that persons following the profession of Boatmen for conveying passengers, coming to or going away from the Island, have not the knowledge necessary to avoid the dangers which surround the Port of St. Helier's; that others have committed impositions on the passengers who went by them; that obstructions have been offered to passengers landing at St. Heliers, by porters crowding the stairs and other landing places; that many of the said porters have seized upon and carried away the effects of passengers without

their consent, and have exacted afterwards an exorbitant remuneration; and that, in some instances, goods, thus carried away, have never been recovered by the owners; that the boats are often obstructed by the waiters of Hotels and Taverns, to the great annoyance of passengers. The States, with the view of correcting such glaring abuses, have established the following regulations:

ARTICLE I.—No boatman shall convey passengers, until he shall have been examined by the Harbour Master of St. Helier, under the penalty of five shillings sterling for each default.

ART. 2.—The Harbour Master of St. Helier's shall keep a register of Boatmen duly qualified, in the following form:

Days. No. Name of the Boatman. Domicile. Name and size of Boat. Number of passengers the boat is licensed to carry.

ART. 3.—The said Harbour Master shall deliver to each Boatman, qualified and registered, a license in the following terms: "No. ———. "The proprietor of the boat No. ———, is permitted to convey ——— passengers. St. Helier's the day of 18 . (Signed) "——, Harbour Master."

ART. 4.—Every boatman employed to convey passengers shall wear a plate on his right arm, and shall have figures indicating the price of passage and the number of passengers he is authorized to convey painted on the stern inside, and the number of his boat painted on each side of the bow outside, according to the direction of the Harbour Master, under a penalty of ten shillings Sterling, for each default.

ART. 5.—Every boat's crew conveying passengers, shall receive from each passenger (his ordinary baggage included) from the 1st of November to the 1st of April a sum not exceeding:—

From the Quay to a vessel in the harbour.....	4d.
Ditto do. to the 1st buoy, outside of the harbour.....	6d.
Ditto do. or from the slip near the <i>rocher fendu</i> , to the small roads.....	1s. 0d.
Ditto do. beyond the hermitage or in the main roads	1s. 6d.
From the 1st of April to the 1st of November, from each passenger, (including his ordinary luggage,) a sum not exceeding	
From the Quay to a vessel in the harbour.....	3d.
Ditto do. to the 1st buoy outside of the harbour.....	4d.
Ditto do. or from the Slip near <i>rocher fendu</i> to the small roads.....	6d.

Ditto do. beyond the hermitage, or in the main roads..... 1s. 0d.

The same sums shall be paid from these several places to the Harbour of St. Helier's, or to the Slip, near *rocher fendu*. A boatman shall, when required so to do, convey any person or persons, wishing to cross from one Quays to another, and may only exact one penny from each; should there be but one person he shall receive two pence.

ART. 6.—No boatman shall embark more passengers than the number enumerated in his license, under a penalty of ten shillings sterling for each default.

ART. 7.—Any boatman to whom one or more passengers may be willing to pay for the number of passengers for which his boat is licensed, shall embark them, and convey them immediately, under a penalty of ten shillings sterling.

ART. 8.—Any boatman exacting from one or more passengers a higher fare than is enumerated in the present regulation, shall be liable to a fine of five shillings sterling.

ART. 9.—All boatmen are responsible for the defaults of those who are employed by them.

ART. 10.—Upon the application of any boatman to be examined pursuant to Art., 1 the Harbour Master will proceed with as little delay as possible.

ART. 11.—All Waiters or Servants of any Hotel or Tavern are forbidden to go on board vessels coming in, for the purpose of recommending their Master's house or of taking care of the effects of passengers, under a penalty of ten shillings for each default.

ART. 12.—The Harbour Master, or his deputy, in the absence of the Constable or Centeniers, is invested with the police of the harbour of St. Helier, and will as much as possible be present at the embarkation and disembarkation of passengers. He is further empowered to call to his assistance the persons present, in order that the refractory and disorderly may be seized and brought before the Royal Court.

ART. 13.—Any person employed as a porter, on the quays and neighbourhood of the Harbour of St. Helier, for carrying luggage and other effects belonging to passengers, must obtain a license, signed by the Constable of St. Helier, and carry on his left arm a brass plate, upon which shall be engraved the number of his license, under a penalty of ten shillings sterling for each default. The said license, shall contain the number, the name and the dwelling of the porter licensed, and shall not be granted without a certificate of two respectable inhabitants, stating that the petitioner is a trustworthy and a fit per-

son for exercising the office of Porter. The license shall be framed as follows :—" The bearer, ———, No. ———, is permitted to follow the profession of Porter in the parish of St. Helier. " Delivered at St. Helier, the ———, 18 ———," The Constable of the parish of St. Helier will keep a register of all the licenses he may have granted.

ART. 14.—All porters are forbidden to station themselves in the neighbourhood of the Port of St. Helier elsewhere than under the shed erected for this purpose on the North Pier, under pain of being fined two shillings and six pence sterling for each default. All carters are also forbidden to station with their carts in the neighbourhood of the Weigh Bridge, or of the Pump situated at the entrance of the Port, under a penalty of two shillings and six pence sterling. They may station themselves in a line along the footpath of the new Cattle Market, (Marché des Etrangers) ; and if any carter leave his cart out of the line, he will be liable to a fine of two shillings and six pence.

ART. 15.—On the arrival of a boat at the steps in the harbour, or other landing-place, no porter shall be allowed to go down to the said boat until all the passengers shall have landed and be upon the quay, under a penalty of two shillings and six pence sterling, for each default.

ART. 16.—Every porter is forbidden to take hold of the trunks or effects of any passenger, unless with the express permission of the owner, under a penalty of ten shillings sterling.

ART. 17.—The servants of, or persons employed by, passengers, may carry the effects of their respective masters, but must also wait until all the passengers are upon the quay, before they go down to the boat to bring the said effects, under a penalty of two shillings and six pence sterling.

ART. 18.—The porters may demand the following prices for carrying trunks, and other effects, viz.—9d. from any landing-place to the Hotels and Taverns in the neighbourhood of the Royal Square, and not farther North than the said Royal Square, nor farther East than the south of Halkett-Place, nor farther West than the entrance of Pitt-Street ; one shilling from any landing-place to the entrance of Roseville-Street, James-street, Hemery-place, Ann-steet to the angle of Charles-Street, Minden-Place, Upper New-Street, Devonshire-Place, Cannon-Street, and Gloucester-Street ; one shilling and three pence from any landing-place as far as the extremity of the parish, on the Grouville Road ; as far as the angle north-east of Simon-Place, St. Saviour's Road ; as far as Val-Plai-

sant towards the North, and as far as the entrance of the St. John's Road and Castle Bridge Brewery towards the West; one shilling and six pence from any landing-place as far as the high road of communication from Rouge Bouillon by Du Val Street, towards the North; and as far as the junction of the high road leading to Rouge Bouillon, to that of St. John, half way up the hill called Mont-Martin. It is however understood, that the effects of each passenger thus conveyed at the above rates, shall not weigh more than 80 pounds.

ART. 19.—In the event of a refusal to pay the fine which a boatman or a porter may have incurred, his license shall be taken from him for such time as the Harbour Master, as regards the boatmen, and the Constable of St. Helier, as regards porters, shall judge necessary. If any person in default is not a boatman or porter, and refuse to pay the fine he has incurred, he shall be seized by the Police, or Harbour Master, brought before the Court, and be condemned to an imprisonment not exceeding eight days.

ART. 20.—The fines and penalties decreed by the present regulation, shall be levied in a summary manner by the Constable or Centeniers of the parish of St. Helier, or by the Harbour Master; and shall be applicable, one third to the Queen, and the rest to the benefit of the Piers and Harbours. The above Regulations to be printed, posted up and published.

FRS. GODFRAY, Greffier.

Passports for France, are granted by the Constable of St. Helier, without any expence further than the charge for the printed form, which is 2d. each. They are also granted by the Vice Consul, subject to a fee.

Patents, renewal of, on the demise of the Crown.—By the 1, W. 4. c. 4, which recites the inconveniences that arose from the patents of public officers in the Colonies becoming void on the demise of the late King, it is enacted that all powers vested in governors of Colonies, &c., appointed by Geo. 4, shall continue until new patents shall be issued by his present majesty and made known in such colony. By sect. 2, it is declared, "that no patent, commission, warrant or authority for the exercise of any office or employment, civil, or military within any of his Majesty's plantations or possessions abroad, determinable at the pleasure of his Majesty, or of any of his heirs and successors, shall by reason of a future demise of the Crown, be vacated or become void, until the expiration of 18 calendar months next after any such demise of the Crown as aforesaid."

Paupers, removal of, to Jersey and Guernsey.—By the 3 and 4 Will. 4. c. 40 persons born in Scotland or Ireland, or in the Isle of Scilly or Man, becoming chargeable, not having acquired a settlement in England must be removed by two justices in a manner directed by the justices at quarter Sessions. This Act repeals, 17 Geo. 1, c. 5, 59 Geo. 3, c. 12, and 5 Geo. 4. c. 83 as to those matters. See *Settlement*.

Pavements, repairs of.—In the case of *Le Gros and others v. Le Breton and others*, the Privy Council held, that the Royal Court of Jersey has no power to appoint Commissioners to repair the pavements of the town of St. Helier, and to raise the costs of such repairs by a tax on the inhabitants.—[Knapp's Reports.]

Pawnbrokers are not licensed, or prohibited: they carry on their business by sufferance, and are generally the receivers of stolen goods.

Pension, attachment of.—The following affidavit made in the case of *Gaudin v. Miller*, a Chelsea pensioner, which was a distress on defendant's goods as well as an arrest upon his person and pension, for rent before it became due, is taken from Bowditch's Treatise, *Island of Jersey*, p. 66.—Before one of the Magistrates of the Royal Court of the said Island, personally appeared Jas. Miller, an Out-Pensioner, who on his oath saith, that on the 1st day of April, 1825, he applied to and took of the above Philip Gaudin, part of a dwelling house with about twenty perches of garden land until the Christmas following, at three pounds five shillings per annum. That in September last he was forbidden to interfere with the fruit in the garden, part of the premises in question. That on the 8th of October following, his goods were seized for the year's rent, himself arrested and imprisoned, and his pension-money of £4 6s. also attached and detained. And this deponent saith, that during the last six weeks of his imprisonment he was confined to his bed of a fever, arising from the dampness and unhealthy state of the prison, which brought him into a most destitute state. That the Deputy Sheriff seeing at length he was wrong in his action, peremptorily ordered him to quit the prison, accompanied with a threat, that if he did not go, he should be turned out.

JAMES MILLER."

"Sworn at St. Heliers, Jersey, before me, THOS. PIPON."

Perimé.—When an Act of the States expires through lapse of time, not having received the Royal Assent within three years, it is said to be *perimé*. In the case of the *Queen v. Anley*, accused of having on the 8th Oct, 1836, made a false affidavit alleging that he had shipped on board the Cutter *St.*

Anne, 35 cabot of wheat, the produce of the Island, whereas it was of foreign growth, contrary to the provisions of an act of the States passed on the 19th day of June, 1834, a witness for the Crown (Daniel Hue,) having absented himself from the Island, until after the 19th June 1837, when the law expired, it not having been sent up for the Royal Assent, the full Court on an objection taken by defendant on his trial the 18th of Aug. 1837, held that inasmuch as the law had become defunct, the action could not be maintained, on which the prisoner was discharged ! So also an Act of the Court granting leave to appeal from the inferior number to the Full Bench, if not renewed within six months is said to be *perimé*, by which the Judgment becomes irrevocable.—In *Sohier v. Gaudin* before the Full Court, Nov. 28, 1838, defendant having appealed against the judgment of the inferior number rendered on the 28th May, previous, moved the Bench, that his appeal be deferred *faute de nombre*, as the Bench was not competent, there being only six Magistrates present : the Court held that the cause had become *perimé* the day before. An appeal was demanded and refused.

Periodical Publications, printed and published in the islands of Jersey and Guernsey, may be sent to England in steam vessels, without manifest, under the following regulation :—“ That the packages be accompanied by an affidavit or declaration, made before the Royal Court, certified by the Governor or Lieutenant-Governor, and attested by the Principal Officer of the Customs, shewing the number of packages, and the number of magazines or other periodicals contained therein ; that the same were *bona fide* printed on, from, and with British manufactured materials, which were imported into the said Islands from the United Kingdom, and that no article of foreign growth or produce form a component part thereof, and upon repayment of any drawbacks which have been received upon the exportation of any of the materials exported to the said Islands.”—[Treasury Order.]

Perjury was formerly punished by pillory, but of late years it has been visited by imprisonment and certain civil disabilities.

Permit or licence for aliens to traffic or sell, is granted by the Bailiff, on the payment of a fee of about four shillings, but it must be renewed periodically.

Petition, right of.—By certain ordinances established by the Royal Commissioners in the 33rd year of the reign of Queen Elizabeth, any person who shall set his name to any thing like a Petition is liable to severe punishment at the discretion of the

Magistrates—[Order in Council, 29th Sept. 1772, requiring the Court to forward a copy of the law on that subject.]

Pier Dues.—By Act of the States, dated July 1, 1836, sanctioned by Council, it is provided, "There shall be levied each voyage, on ships and vessels arriving in the harbours of this Island, for the salaries of the Harbour master, Directors, &c., viz : on each vessel of twenty-four tons and under, two shillings ; and on each ship above twenty-four tons one penny stg. per ton, according to the guage." A bill has lately been brought into the States to alter the said dues, but it has not yet received the royal assent. In the case of *Lerrier v. Nicolle*, 1837, Bertram and Le Maistre held that defendant was personally responsible for the pier dues, which had accrued during his agency, to the *Liverpool* steamer, plaintiff having declared upon oath that the said Agent had undertaken to pay the same. See *Quarantine and Anchorage dues*.

Pilots are licensed by a board composed of 9 persons, 3 of whom must be merchants and 6 retired masters of vessels, appointed by the Committee of Harbours and Piers every 3 years. The qualifications of a pilot are 1st. a knowledge of the situation of the rocks in the neighbourhood of the Island. 2nd The course of the tides and currents. 3rd The manner of working ships and generally all that relates to the duties of Pilots. Their number is unlimited and their duties are to pilot ships and vessels coming into or sailing from the Harbours of St. Helier and St. Aubins. The regulations for Pilots and the tariff of dues for piloting is contained in an Act of the States passed on the 16th July, 1836, which not having been sent up for the royal assent, will expire through lapse of time, on the 16th July, 1839.


Pleadings.—No person can plead his own cause without permission of the Court, even though he be an Advocate, and a client having once selected his Advocate for a cause, by a rule of Court he cannot change him. Advocates are allowed two speeches on each side, but if they have no clients, they are not allowed to speak at all. By the Code of Laws of 1771, it is provided, that 'in order to avoid confusion, and that the right of each may be duly established no person shall be allowed to plead his cause without an advocate. The Queen's officers at ordinary Courts shall have a right to pass each six causes, after which each Advocate shall pass three, and so on according to the same order. Again : 'The Judges shall not plead nor give advice in any other causes than those wherein they shall be interested ; those who undertake to do it, shall be deprived of their vote in the matter pending : however, when

a Judge shall not be satisfied upon some point in dispute, and that he shall be desirous to be better informed, in order to give a sound opinion, the Chief Magistrate shall see thereto. The Judges shall not give their opinions in an arbitrary manner but according to Law, and the customs of the island. Suits shall not be sent before arbitrators (except for the division and liquidation of accounts) and as to affairs in the Jurisdiction of the Viscount, they shall be sent before him as formerly, but the Judges shall not be named arbitrators in causes pending in Court. No one shall retain or engage more than one advocate to speak or plead in one cause. Parties and their Advocates, shall not interrupt each other in pleading, but the plaintiff shall establish his arguments, silence being kept by the adverse party; after which the latter shall make his reply, observing the same order, and in that manner proceed by reply and rejoinder if the matter so requires: and whosoever shall transgress this rule, if he be an Advocate, he shall be punished by fine at the discretion of the Court, which shall not exceed three livres tournois for the first offence, and shall be suspended for a month for the second, and for ever in case of another repetition, and if he be a private individual, they shall inflict on him a fine which shall not exceed three livres.

Pleas are usually set forth verbally, and are recorded by the Greffier: they may be altered, amended, or retracted. In the case of Storey, (1836) who had pleaded Guilty to a charge of burglary, he was afterwards allowed to plead "Not Guilty," and the record was altered accordingly.

Poor, funds for.—All parochial assemblies held for considering the funds of the poor, should be presided by the Rector, and no assembly has a right to apply such funds to any but charitable purposes.

Poor's Rate is regularly assessed every year in January in all the parishes. The casual resources are totally insufficient, and the sums required to be levied for the relief of the poor, especially in the town and parish of St. Helier, are become very considerable. The poor's rate is not assessed as in England on the occupiers or tenants, but on all the freeholders resident in the Parish. All persons assessed to the poor's rate acquire the elective franchise, and those who contribute to a certain amount, as regulated by an Order of Council of 1804, are *Principaux* of the Parish, and members of the Vestry. The clergy are exempted from the poor's rate for their benefices, but not from contributing to the special defence of the Island.—*Code*, 177, p. 266.

Post Office, embezzling letters.—In the case of Wm. Smith, a postman, who in 1838, was convicted of fraud, swindling and robbery, by breaking open a letter, and appropriating its contents, namely, three bank notes, value £5 each, to his own private use, was sentenced to six months hard labour, and at the expiration thereof to be banished from the Island for the term of five years.  Banishment from Jersey, means transportation to England (!) and being there set at liberty !

Powers of Attorney are held to be valid if executed according to the laws of the country where made. It requires a special power to execute a deed conveying any interest in rent, lands or houses, but it is not necessary that such special power should be recited in the deed itself. The deed however must recite the authority or power of attorney as being of record in the registry, because powers of attorney for general purposes in the island, have no authority until registered in the Court. Those for the sale of Stock in England may be executed before a Jurat, Notary Public, or Vice Consul ; the charge by a Jurat is 1s., and by Notary Public and Vice Consul, 5s.

Precedents.—The precedents of the Royal Court are overwhelmingly numerous, and are so often unjust and contradictory, that they may be compared to papers in so many pigeon holes, from which some may be taken out to suit every occasion. They ought therefore to be received with particular caution, even setting aside the ignorance, prejudice and party feeling, which may have dictated several of them : allowances must still be made, when viewed in the most favourable light, that men of different minds and under different circumstances, will often decide very differently about the same matters.—[Durell,]

Prévôts are six officers of the Court who deliver the summonses in civil causes, which they are bound to do within one clear day after they receive them. Their fee is three pence each. By the Code of Laws of 1771, it is provided, that " the *Prévôts* shall be bound to answer by word of mouth the summonses they shall have delivered for the Saturday's Court, and shall be reputed disobedient if they shall forget when the cause shall be called, and be bound to answer for losses and prejudices which shall happen to the parties, through their default." They take the following oath:—" You promise and swear by the faith and oath that you owe to God, that well and faithfully you will exercise the office of Queen's *Prévôt* in the parish of ———, that you shall make all true and good summonses and records, and see that the right of Her Majesty be guarded

and maintained in all things, and execute the ordinary and requisite declarations, you will receive the farm rents and levies, and account for such, and perform generally all other duties which appertain to the said office."

Principaux, or principal inhabitants.—In the parish of St. Helier, all persons who are assessed to the public rate at 20 quarters of wheat rent are *principaux*, and assuch, with the parish officers, compose the parish or vestry meeting, and together with the Constable as their President assess and rectify the rate, and manage all other municipal matters for the government of the parish. In other parishes the qualification is less.

Prise de Corps.—A kind of Hue and Cry made for the apprehension of persons who have broken prison. When a party has effected his escape, the jailor gives information thereof to the Viscount or his Deputy, who is virtually master of the Prison. This officer draws up an official account of the matter in writing, which is called a *Report*: this is transmitted to the Attorney General, who presents it to the Court at their first sitting, that measures may be ordered accordingly. After hearing the Report read, and the conclusions of the Crown officer, the Court passes an act, enjoining all persons not to harbour the said party, but to aid and assist in his discovery and apprehension, under pain of incurring such penalty as the Court may award. Copy of this act is given to the *Prévot* of each parish, who is required to read the same aloud at the church door of his parish on the following Sunday, immediately after Divine Service.

Prisoners can be tried out of term as well as in, by virtue of an act of the States confirmed by Council, and enrègistrèd on the rolls of the Court, Feb. 10, 1834.

Prison, escape from.—In the case of Wren and others, charged with robbery, who broke from the Jersey prison in 1836, escaped to Guernsey, were pursued by the gaoler and apprehended there, the Court of that Island, held that they were *not* competent to take cognizance of the matter, as it originated out of their bailiwick, discharged the prisoners; but in the case of J. Mullins, J. Hanham, and George Joyce, who broke from the Dorsetshire Gaol, in 1838, charged with having committed certain robberies at Sturminster, and who escaped to Guernsey, and were apprehended there by the Constable of Sturminster, on a writ of *capias* issued by a Magistrate of the County, the Guernsey Court decided, that the warrants were illegal and had no force in that Island, yet nevertheless, as the Island had latterly become the refuge of run-away criminals, they recommitted the prisoner to goal

without any warrant whatever ! Thus, they first decided against the legality of the instrument, and restrained the Constable from exercising an unlawful authority, but by committing the prisoners without any warrant at all, or without a charge being made within their cognizance, they exercised an unlawful authority themselves, and one of a much graver nature ! The Court remanded the prisoner for one month, to enable the Constable to procure an Order in Council to remove them to England, but as he did not succeed in getting it, they were ultimately put in charge of the Officer on board of a vessel, bound for Weymouth without any mandate whatever.

Privileged Causes are those of the Bailiff, Jurats and Crown officers, which are allowed to be brought on without being inscribed on the scroll ; but it is questionable whether the custom was not introduced by usurpation.

Privileged Debts.—Landlords for rent, and servants for wages have a preference in Jersey ; and in *Guernsey*, by a decision of their Court in the case of *Carey v. Roseman*, 1835, it was held that according to law and invariable practice, the claim of a medical gentleman for attendance during the debtor's last illness, was privileged beyond that of any common creditor, and consequently entitled to a priority of payment.

Privy Council, Judicial Committee.—This is the appellate jurisdiction in the last resort, for suits originating in the island. It consists of the Lord President of the Council, the Lord High Chancellor, and (if they are members of the Council) the Lord Keeper of the Great Seal, the chief Justices of the Queen's Bench and Common Pleas, the Master of the Rolls, the Vice Chancellor, the Chief Baron of the Exchequer, the Judge of the Prerogative Court, the Judge of the Admiralty and the Chief Judge in Bankruptcy, and all members of the Council, who shall have held any of the offices before mentioned.

Probate or Grant of Administration in England, its effect on Property in the Colonies.—If a British subject domiciled in England, die here, a probate granted by the Prerogative Court binds the property in the plantations and the probate granted there. [*Burn v. Cole*, cited 4. T. R. 185.] And Lord Hardwicke laid down the rule, that debts due in Scotland to an English subject resident here, who died intestate, were distributable when recovered, according to the laws of England, and that the question would be the same respecting the goods of an intestate in France or other Foreign Country. [*Thomas v. Watkins*, 2 Ves. 35.] And the personal estate of an intestate is distributable according to the laws of the country where he was resident at his death. [*Pipon v. Pipon*, Ambler

25, 2nd edit. 1828, and the cases cited by the learned editor, n. 2, p. 26.] Lord Loughborough once said, [In *Sill v. Worswick*, 1 H. B. 691.] "It is a clear proposition, not only of the law of England, but of every country in the world where the law has the semblance of science, that personal property has no locality, but is subject to the law which governs the person of the owner." In conformity with this principle the Court of Exchequer held [In *re Ewin* 1, Cr. and Jer. 151.] that American, Austrian, French and Russian stock, the property of a testator domiciled in this country at the time of his death, was liable to legacy duty, and [In *Jackson v. Forbes*, 2. Cr. and Jer. 382.] that legacy duty was not payable on legacies left by a testator who was born in Scotland, but resided and died in India, though the money, the produce of his Indian property was sent to Bankers in England, and invested in the funds here in their names, and the stock was afterwards transferred into the name of the Accountant General of the Court of Chancery, and made the subject of a suit and a decree in that court.—[*Clarke's Colonial Law*, p. 105.]

Process, serving of.—Process must be delivered at the defendant's domicile, but if he should be absent from the Island without having an Attorney upon record, copy of the process may be left at his last place of residence, or be put under the door, or an administrator may be appointed to him—though it is questionable if the Court has a right to do this until after the debtor has been absent from the Island a year and a day.

Procureurs du Bien Public are appointed by the principaux, and their office is to conduct parochial lawsuits. The following is a translation of their oath of office :—You promise and swear by the faith and oath that you owe to God, that you will execute the office of *Procureur du bien Public* for the parish of — That you will maintain and increase it as your own, and better if in you is possible ; that you will regulate yourself by the good counsel and advice of the Principaux and Officers and Chiefs of Families of the said parish, and perform all other duties which appertain to the said office.

Procureur-General is a person appointed to administer to the property of another, and by which the owner becomes interdicted from making any transaction whatever. A *Procureur-General* stands in a similar situation to a Curator, except that he has no electors to advise him how to act : his power being under no controul.

Procureur-General de la Reine or Queen's Attorney General, is appointed for life by Letters Patent from the Crown. His

duty is to plead the Queen's causes and to defend Her Majesty's rights and prerogatives both in the States and the Court; to counsel and advise her Representative; to expound the laws to the Jurats; to prosecute and endeavour to bring to condign punishment all offenders against the public ordinances, and to see that all fines and forfeitures be duly levied to the use of the Crown. His salary in £100 per annum, and the fees of office about £600 more, independent of his *honoraries* as counsel in private suits. In the case of *Le Breton v. Ennis*, 1839, an action for damages for an alleged slander, defendant interjected a Remonstrance demanding that the Court should appoint a Stipulant Attorney General to protect the public interest with impartiality in that case, and draw conclusions against such witnesses, as suppressed or perverted the truth, the inferior Court by the casting vote of the Bailiff, (*De Veulle*) held that the matter was not within their competency, and rejected the Remonstrance. The following is a translation of his oath:—"You promise and swear here, in the presence of God, that you will faithfully execute the place and office of *Procureur-General*, under our Sovereign Lady Victoria the First, by the Grace of God, Queen of Great Britain and Ireland, and of the dominions belonging thereto, in this her Island of Jersey, renouncing all foreign powers. You shall keep the right of Her Majesty, and support the honour and glory of God and of his pure word: you shall maintain and defend the Laws, Privileges, Liberties and Franchises of this Isle, opposing yourself to those who would wish to violate or infringe them. You shall also recall by law and justice the rights of her Majesty if any are lost. You shall also cause diligent search to be made for traitors, murderers, robbers, thieves, adulterers and blasphemers of the name of God and other violators of the public ordinances, and prosecute them to the utmost rigour of the Law, until they be corrected according to their demerits. You shall also repress and chastise all boxers, quarrelsome, mutinous and seditious persons, that the force may remain to the Queen and to her justice. You shall also maintain and defend the honour of the Governor, Bailiff and Jurats, as much as in you shall be possible. Lastly, in your conclusions you shall conform yourself according to the good advice of the Justiciers, you promise this upon your conscience."

Prohibition is a prerogative writ issuing properly out of the Court of Queen's Bench, but for the furtherance of justice, it may now be had in some cases also out of the Court of Chancery, Common Pleas, or Exchequer, directed to the Judge and

parties of a suit in any inferior Court, commanding them to cease from the prosecution thereof, upon a suggestion that either the case originally, or some collateral matter arising therein, does not belong to that jurisdiction, but to the cognizance of some other Court. This writ may generally issue to Courts of Common Law, Admiralty and Ecclesiastical, but doubts exist as to whether it would lie against a proceeding at common law in Jersey : there is, however, reason to believe that it would reach any case not within the competency of the Ecclesiastical Court, and even in civil matters also, where the jurisdiction had been taken away by statute, for it is competent for any of the Courts of Westminster Hall to direct a writ of prohibition, to any other Court, when they proceed to adjudicate in matters where they have no jurisdiction. The general grounds for a Prohibition to the Ecclesiastical Courts are either a defect of jurisdiction, or a defect in the mode of trial. If any fact be pleaded in the Court below, and the parties are at issue, that Court has no jurisdiction to try it ; because it cannot proceed according to the rules of common law, and in such case a prohibition lies. Or where the spiritual Court has no original jurisdiction, a prohibition may be granted after sentence. But where it has jurisdiction and gives a wrong judgment, it is the subject matter of appeal and not of prohibition.

Promissory Notes, how set aside by verbal evidence.—This perhaps will be best explained by the following extract from the *Guernsey Star*, Nov. 5, 1838 :—A case was tried last week before the Royal Court of Jersey, which exhibits such a total absence of the rules of law and so flagrant a violation of the first principles of justice, that if we did not know the plaintiff personally, and had we not seen his documents, and heard the particulars from his own mouth, we should have considered the sentence to have been absolutely impossible. The case was this. A Bristol merchant sold goods to a Jersey tradesman, for which he took his bill, £23 13s, at five months date. When the bill came to maturity it was dishonoured, and the tradesman was arrested and gave bail. When the cause was read, the defendant produced two witnesses who swore that the plaintiff had promised to give the defendant a credit for five years, which the plaintiff positively denied, nor was any document whatever produced to sustain the deposition of the witnesses. The plaintiff rested his case solely on the bill. The Court, however, gave a verdict in favour of the defendant, and saddled the plaintiff with costs to the tune of seven pounds British and some shillings. We feel it our duty to

make this case public for the protection of English merchants, for this precedent destroys all the commercial sacredness of bills, since the signature of a debtor may in Jersey be set aside on the testimony of two witnesses, if they swear that the creditor made a verbal promise for time. In justice to ourselves, we can assure English merchants that such a defence would have been scouted by the Royal Court of this Island.—[Guernsey Star, Nov. 6, 1838.]

Promise, proof of.—A sues B for a debt. C caused the action to be discontinued, by promising in the presence of D, to pay the amount. Some time after, A claimed payment. C demurred, and pretended that his words did not involve a promise. A had then two ways of proceeding: he might have obliged C, to declare upon oath, whether he actually did, or did not, give a specific promise; or he might have summoned D, to prove the obligation: the latter was however related to C, and therefore informed A, that his evidence would not be admitted. Thus did the law assume, in one sense, the power of a court of chancery, by compelling C to a declaration, upon oath and, in a civil light, to criminate himself; while, on the other hand, A was deprived of D's evidence, on a principle directly contrary to that on which, *a priori*, the disqualification originated. D's evidence was to be suppressed, because, from affinity he might have been partial to C, whereas the suppression operated, in the present case, completely in C's favour, by depriving A of his only witness.--[Plees.]

Proof of debts made in England for recovery abroad.—The proof of debts whether by specialty or simple contract, when the creditor resides and the debt occurs in England, is made in a manner peculiar to the Colonies, under the regulations of the Statute, 5 Geo. 2, c. 7. By this act it is provided that in such cases it shall be lawful for the Plaintiff and Defendant, and also to and for any witness, to certify and prove any matter or thing before the chief magistrate of the city, &c. in or near which he resides, by affidavit or writing upon oath, or if a Quaker by affirmation; and every affidavit or affirmation certified under the city seal, in manner thereby directed and transmitted to the colony, shall be of the same force and effect there as if sworn, *viva voce* in open Court. No notice is required by the act to be given to the opposite party on the occasion of making such affidavit before the magistrate, but the proceeding is entirely *ex parte*; and on production in the Colonial Court of the affidavit so sworn, it is allowed in proof of the debt; though such evidence may of course be encountered by *viva voce* testimony on the opposite side. Proof of debt under this

Act, which is usually received in the Colonies and British Possessions abroad, has never yet been acted upon in the Channel Islands.

Proof of writings attested abroad.—Since the 26 Geo. 3, c. 57, s. 38, for proving writings attested by persons resident in the East Indies, it has been laid down as a general rule of evidence, not confined to the East Indies, that when the subscribing witness to a deed, or any other written instrument, is absent in a foreign country, and consequently is not amenable to the process of English courts of justice, it is sufficient to prove the witness's handwriting. [Vide *Cooper v. Marsden*, 1 Esp. 2; *Gough v. Cecil*, Selwyn, 516; *Adam v. Kerr*, 1 Bos. and Pul. 360; *Currey v. Child*, 3 Camp. 283; *Cunliffe v. Setton*, 2 East, 183; *Priuce v. Blackburn*, 2 East, 250; *Phil. Ev.* 4 ed. 513; 1 Stark. Evid. 342; *Crosby v. Percy*, 1 Taunt. 364, 462, and *Burt v. Walker*, 4 B. and A. 697.] although we have seen it is required by the statute that the handwriting of the party to the instrument should be also proved; and this proof has been also required by high legal authorities, on the ground that if the attesting witness were present he would prove not merely that the instrument was executed, but the identity of the person executing it, for the proof of the handwriting of the attesting witness only establishes that some person executed the instrument by the name which it purports to bear, but does not go to establish the identity of that person. [*Wallis v. Delancey*, 7 T. R. 266, n.; *Nelson v. Whittal*, 1 B. and A. 21; vide *Coghlan v. Williamson*, Doug. 93.] However, in a late case, where an action was brought on a promissory note, and the subscribing witness was dead, it was held sufficient to prove his handwriting, and that the defendant was present when the note was prepared, without proving the handwriting of the defendant. [*Nelson v. Whittal*, 1 B. and A. 19.]

Property of Intestates.—A widow on the death of her husband, and before forty days shall elapse from that date, may go before the Court, and declare that she stands upon her marriage rights *se tenir sur son mariage*, by which she reclaims her original personal estate, and one third of the real property her husband possessed at marriage, renouncing her dower or one third of the acquired property, and becomes released from one third of the debts which her husband owed at his decease. When a stranger dies in the Island intestate, leaving no direct heirs or kindred living in the Island, the Viscount, or his Deputy, takes possession and sequesters the property for the benefit of those to whom it may appertain. If letters of administration to an intestate who died in

Jersey, be taken out in *England*, a return must be made to the Stamp office, Somerset-place, within one year, of all the Intestate's residuary personal estate, though situated in Jersey, Guernsey or elsewhere, and the duties be paid thereon. Although this is the *law*, it is scarcely, if ever, complied with. The notices sent from the Legacy office being treated with silent contempt. The custom of the city of London, relative to the distribution of Intestate's effects, as recognized by parliamentary statutes, extends to all those who were free of the city, *wherever they may have died, or wherever their effects may be situated. See Intestates, distribution of their estates.*

Property by Marriage.—The moveables of two persons entering into matrimony, become a Joint Stock, but the real estate does not: the wife's still remaining vested in her and cannot be alienated by the husband without her being made a party to the deed. If they have been separated *quant aux biens* she may alienate without his consent, for they are then remitted to their original position as regards property. She can also claim her *marriage*, that is Household Furniture, Bed, Bedding, House linen and wearing apparel which she brought to her husband by marriage—and she can do this even to the prejudice of her husband's creditors. A widower enjoys at his wife's death, if there have been children, her real estate until he marries again; but it then reverts to his next of kin, as it does if there has been no issue.

Property by Marriage in France.—By the custom of Paris, and now by the general law of France, persons marrying place part of their property in common (*en communauté*); of this the husband has the administration during coverture; another part they retain for their private or separate use; this is the *propre* which should not be confounded with the *propre au succession*; in the latter case, *propre* signifies a real estate derived by descent, as distinguished from a real estate acquired by purchase.

Property of a Minor under a foreign appointment.—The Guardian of a minor appointed in England cannot dispose of any property belonging to his ward within this Bailiwick, unless his appointment is ratified before the Court.

Property, placing of in the hands of Justice.—A debtor possessed of landed property, who desires to have time to enter into an arrangement with his creditors, when judgment has been given against him for payment of a debt on pain of imprisonment, (whether the demand be real or fictitious) may, on producing a *statement* of his affairs, showing conformably to the law, that has a sufficiency wherewith to acquit his debts

obtain a respite of a year and a day. See *Code*, 1771, pp. 221.

2. "The debtor who shall claim to put his property into the hands of Justice, in order to have time to arrange his affairs, and come to a compromise with his creditors, shall not be permitted to do so, without having previously satisfied the Court that his assets are sufficient to discharge his debts, in which case, he shall be *bound* to produce a faithful and a just *statement* of all his property both *personal* and *real*, and to lodge at the same time with the Greffier (clerk of the Court), all his books of accounts, bills, schedules, bonds, titles, copyrights, documents and evidences, upon oath, that recourse may be had thereto in the examination of his *statement*, if necessary. The persons who shall be *authorised* by the Court, to take into their charge the examination and management of the affairs of the debtor, shall be held to attend to the acquittal of his debts, without delay, and to appoint a person fit to collect his assets and the rents accruing from his real property, who may thereafter be competent to account for such, to whom it shall appertain, and who shall notwithstanding grant to the debtor what may be reasonable for the sustenance of himself and his family, according to his station in life, and rank in society. The respite which shall be granted to the debtor shall not exceed a year and a day, after the expiration whereof, if it is made apparent that the creditors have not been satisfied, both his moveable and real property without its being necessary to have recourse to any other process, shall be adjudged renounced and decreable." The following is the oath which the debtor takes. See *Code*, p. 315. "You swear by the faith that you owe to God, that the *statement* of your affairs which you have now delivered in writing, is just and true to the best of your knowledge, also that if your creditors are not *satisfied* within the time allowed you to compromise with them, all your moveable and real property becoming thereby renounced, and your real property decreable, you shall bring all your copyrights, documents and evidences, into the hands of the Greffier of the Royal Court of this Island, for the preservation of the right to whom it appertains, and that whilst your property shall be under examination you shall not dispose thereof, otherwise than with the consent of the persons authorised."

This placing of property in the hands of Justice is a complete delusion, by which the debtor is entrapped on the one hand, and the interests of the body of creditors is sacrificed on the other. It must be observed that the measure is adopted by the debtor at the instigation of a single creditor, however trifling his claim may be, without the concurrence of any others,

and that the court, who from the nature of their office ought to be excluded from intermeddling with private matters between parties, officiously step in, and usurp the powers which ought to belong to the creditors, or to the majority of them, as is the case in all civilized countries in matters of bankruptcy. The debtor names two persons, chosen from the bench, the bar, or the officials, subject to the consent of the sitting magistrates, which persons are called *autorisés* or persons authorized ; but mark—not to take possession of the debtor's estate and effects as assignees, or to administer them for the benefit of the debtor and his creditors, as Trustees ; no : for there is no assignment made of them from the debtor, and they still remain in his actual possession. Then what are the persons *authorized* to do ? why, merely to *examine* his *statement*, and to verify it by his documentary evidences ! Now however astounding this may appear, it is nevertheless true. It is generally supposed that the *property* is placed in the hands of Justice, or rather of the *autorisés*, but this is a misconstruction arising from the loose and slovenly manner in which all legal matters are managed in the Island. It is not the property but the *statement* which is placed in the hands of Justice, and that merely for *examination* ; the titles and documentary evidences are placed in the hands of the Greffier, (Clerk of the Court) *temporarily*, in order that the *autorisés* may have recourse to them, so as to be enabled to verify the *statement*, and to ascertain whether it is faithful and true, according to law. See *Code*, 1771, p. 221, and the debtor's oath p. 315. Seeing then, that the debtor does not place his *property* in the hands of Justice, but only a statement of it, and that the former still remains in his actual possession, it is quite clear that the only check against his disposing of it is the *oath* he takes that he will not do so without the consent of the *autorisés*. If he thinks proper to violate this oath he might do it with impunity. The Code does not provide that a breach of it shall be deemed perjury, and without such a provision, the penalties of perjury cannot in strictness of law ensue ! It is true, the statement when registered, may be considered in the light of a cognovit, or attachment against the property, but then judgment must be entered up, or the attachment be sued for in the usual way. The sum total of the matter is, that the debtor is bound by *oath*, not to dispose of his property without the consent of the *autorisés*, that the *autorisés* have no title to it themselves, and consequently cannot confer it on another : nor can they authorize the debtor to dispose of it until *all* his creditors are satisfied, which in ninety-nine cases out of a hun-

dred can never be effected, because the creditor who is likely to become *Tenant* to the estate, will not forego the chance he has of reaping a good harvest at the expence of those who will be barred from participating in it under the *decret*. In consequence of this the estate and effects usually remain for the year and a day, in *statu quo*, excepting that the debtor and his family are allowed a maintenance out of them for that period, and at the expiration thereof, the whole is adjudicated in one lot by a decree for the benefit of the *Tenant*, and such prior claimants as had recovered judgments and had caused them to be registered against the debtor's estate. See *Insolvency*.

Propositions to the States must, by an Order in Council, of 1771, be submitted in writing, in the form they are intended of to be passed 14 days before they are debated, and passed. By an Order in Council of the 23d May, 1816, the Greffier of the States must certify that every act which he may transmit for royal approbation, has been lodged *au greffe* according to law.

Provisional Laws and Ordinances.—And his Majesty doth hereby order, that no laws or ordinances whatever, which may be made provisionally or in view of being afterwards assented to by his Majesty in Council shall be passed, but by the whole assembly of the States of the said Island, and with respect to such provisional laws and ordinances so passed by them, that none shall be put or remain in force for any time, longer than three years, but that the same upon its being represented by the States to his Majesty, that such Laws and Ordinances are found by experience to be useful and expedient to be continued, shall having first obtained his Majesty's royal assent and not till then, be inserted and become part of the code of the political Laws of the said island ; and his Majesty doth further order, that when anything is proposed to the assembly of the States, it shall be wrote down in the form in which it is meant to be passed and there shall be debated, after which it shall be lodged *au greffe* for fourteen days at least before it shall be determined, in order that every individual of the State may have full time to consider thereof, and the Constables to consult their constituents if they judged necessary, and that this delay shall be only dispensed with in case of emergency in which the safety of the Island may happen to be immediately concerned. And his Majesty doth hereby further order, that in case it should happen that the Governor, Lieut. Governor, or Commander in Chief of the said island should not be present at the Assembly of the States, then that before any Act or matters determined therein shall be effectual, application shall first be

made to the Governor, Lieut. Governor, or Commander in Chief, to know whether he chooses to make use of the negative voice he hath." [Order in Council, March, 28th, 1771.]

Public Accounts, are audited by the States : no Constable is allowed to pass his accounts without vouchers : they are limited to a fixed amount of expenditure and without the consent of the States they cannot legally go beyond the limit.

Publicans.—See *Ale Houses*.

Publicity of States Meeting—The States have the power of regulating from day to day, the admission of strangers into their assembly. [Order in Council, Aug. 14, 1833.]

Public offices, malversation of abroad.—In ex-parte Stephen before the King's Bench, in 1832, Mr. Justice J. Parke held that the applicant might proceed against General Darling, either by indictment or civil action in that court, for a personal wrong committed when Governor of New South Wales. Justices Taunton and Patterson concurred. In *Glynn v. Sir W. Houston*, Governor of Gibraltar, before the Rolls Court, in 1836, which was a bill of discovery, praying that defendant might be ordered to produce various deeds, letters, books, papers, cases which had been stated for counsel's opinion, and other documents in his possession, in aid of an action, which plaintiff had commenced against him in the Court of King's Bench, for assault and false imprisonment committed by Col. John Hastings Myer and a party of soldiers under his command; on an objection raised by Mr. Pemberton, that Defendant was not amenable for what he had done in his public character, Lord Langdale is reported to have said: "there was not a doubt but that a governor or any other person invested with an official capacity was answerable for a wrong, not only in damages but also criminally, and he could not consider that there was any difference, because the injury complained of was small. In this case the plaintiff's life had been threatened, and he had been prevented from leaving his house, for which there certainly was a remedy by action. But as no person was bound to make any admissions which would criminate himself, the bill for the discovery of the documents could not be maintained."

Putting off Trial on account of the absence of a witness. In civil cases if a witness is absent, the trial is put off without any affidavit being made of the materiality of such witness. The Court never requires to be satisfied that his evidence is really necessary, but adjudges the witness (unless he sends a legal excuse) to the expences of the day. Conformably to a certain Order of the King and of his Council, dated the 30th

day of April 1696, and enrolled in the book of the States the 4th day of July following, it is ordered that the *Clameur de Haro*, and Coroner's Inquests shall be treated with dispatch the first day of Court, provided there shall be three Judges sitting at the least. *Code*, 1771.

Quakers are exempted from Militia duty in Guernsey, but not in Jersey. See *Affirmations*.

Quarantine-boat and Anchorage Dues.—There shall be levied each voyage on all ships and vessels coming into the Harbours or roads of this Island, viz: on traders four pence per ton, and on those which come into the ports or roads of this Island less than six times a year, six pence per ton, according to the gauge named in the certificate of registry. The following are exempted from all duties: 1st.—His Majesty's ships. 2d.—Vessels belonging to the Royal Yacht Club. 3d.—Vraic boats, and fishing-boats not decked. 4th.—All ships which shall come into the roads of this Island to receive orders for their destination, or put in by stress of weather, or by cause of damage, provided that they disembark no passengers, nor merchandize, nor any other thing except provisions for the use of the crew.—[Act of the States, July 4, 1836.]

Quarter days.—The Quarters of a Year for letting houses shall be regulated in the following manner, that is to say, the first quarter of the year shall expire the 25th day of March, the second the 24th day of June, the third the 29th day of September, and the last quarter the 25th day of December.—*Code*, 1771.

Quarters to the Rate and Quarters of Rent.—Quarter to the Parish Rate and that of Wheat Rent are very different; the first is that which is levied for the maintenance of the poor, main roads, &c. averaging annually in the Country Parishes from 2 to 5 shillings, per quarter, and the second is a mortgage on property, each quarter being worth from £16 to £17 10s. according to the net value of the property on which it is due, and the quantity of wheat rents which the proprietor of that property has to receive; the legal interest of each quarter annually received is, 16s. 8d.

Queen's Bench in England.—This Court has jurisdiction over the conduct of Governors and all persons holding office under the Crown.

Queen's Receivers are appointed by the Governor, and sworn in by the Court. The Governor may divide the office and appoint more than one, committing such branches of the revenue as he shall think fit to each of their charges, and all of them to be sworn Receivers, and he may displace them, and put others in

their room as he pleases. The Receivers' office is to receive all the Queen's revenue, forfeitures, wrecks of sea, hen's eggs, &c. They keep the book of the Queen's rents, in a large margin of which, over against the name of him from whom any rent is due, they set a mark to shew the year of our Lord, when they receive that rent. And these books are in some sort a matter of record. What comes to the receivers' hands is to be issued according to the governor's appointment, to whom alone the receivers are accountable. Their oath of office is as follows :—" You _____ inasmuch as it has pleased _____ Governor in this isle of Jersey, under our Sovereign Lady, Victoria the First, by the Grace of God, Queen of Great Britain and Ireland, &c., to have named and chosen you to be receiver general of the revenues of her Majesty in this said island of Jersey, as appears by her order, you promise and swear by the faith and oath that you owe to God, that you will be loyal and faithful to Her Most Excellent Majesty and to her noble successors, acknowledging her under God, chief and supreme Governor in all her Kingdoms and Dominions: You shall demand and receive the rents, debts and revenues of Her Majesty, by all means of right and justice, in order to be responsible to the said Governor, to whom you shall pay obedience and to the Lieut. Governor, in what shall regard the service of Her Majesty."

Queen's Receivers, their office not incompatible with that of Constable.—In the case of Mr. Pipou, one of the receivers of the crown revenue, who in 1779, was elected Constable of the Parish of St. Brelade, and to whom the Court refused to administer the oath of office, certain members of the States petitioned his Majesty in Council on the subject. The said petition having been referred to the committee, and they having given in their report: "His Majesty taking the said report into his consideration was pleased with the advice of his Privy Council to approve thereof, and to declare that the office of Constable and representative of a parish is not incompatible with the office of Receiver of his Majesty's revenue in the Island of Jersey." [Order in Council, May 18, 1781, registered, Sept. 17, 1781.]

Queen's Weights.—There shall be a person of sworn capability to have the custody of the Queen's Weights, who shall receive the following fees, that is to say, one sou eight deniers (a small copper coin of the value of a tenth of an english penny) for the weight of each ox or cow. One sou eight deniers for each bale of wool, four deniers for each quarter of bacon, and eight deniers per hundred for all other kind of

one Island, have only to fly to the other, to escape all punishment ; and now we have a strong case which bears us out in our assertion. It will be seen by the following report of the proceedings before the Guernsey Court, on Saturday last, that Capt. Ollivier, Master of the Schooner *Sarnia*, London Trader, detained in that Island on a charge of rape committed on the person of Miss Mary Gould, aged 19 years, a passenger, on board the said vessel, in Jersey harbour, has been set at liberty, because they had no cognizance of the case, and the Jersey authorities had virtually refused to take any measures to cause him to be removed to this jurisdiction. We are informed that the Guernsey Court were much surprised at Sir John De Veulle's letter, and discharged the prisoner with great reluctance. The Bailiff reminded him, that had the *Sarnia* arrived there immediately after the crime had been committed ; or, had it been committed during the voyage from Jersey to Guernsey, —had not, indeed, the vessel returned to Jersey, and broken the voyage—the Guernsey Court would have felt it its duty to try him for the crime with which he stood charged : — “ Charles Lefebvre, Esq., his Majesty's Greffier, presented the subjoined letter to the Court which he had received from Sir John De Veulle, Bailiff of the Island of Jersey, respecting the late master of the *Sarnia*, who was provisionally detained in jail, according to a decision of the Court dated the 30th ultimo : ‘ JERSEY, the 19th December, 1836. SIR, I had the honour to receive last Thursday, your letter dated 14th inst., with the act of the Royal Court of Guernsey of the preceding day, and I hasten to inform you that I have this day submitted the documents to the Royal Court of this island, who have requested me to write to you, that *should Peter Ollivier come over to this island*, and Mary Gould lodge a complaint in the hands of the King's Procureur against the said Ollivier, he would be prosecuted before our tribunal for the crime of which he stands accused. I have the honour to be, Sir, Your very humble and obedient Servant, J. DE VEULLE, jun., Bailli of Jersey.—Charles Lefebvre, esq., King's Greffier, Guernsey.’ The Court, after having heard the letter read, and taken thereon the conclusions of the Crown Officers, ordered that the said Ollivier *should be set at liberty*, the offence of which he was charged not having been committed in this island. The Bailiff in communicating to him the decision of Court, strongly urged him to make what atonement he could to the young woman for the injury he had done her.”—[News, Jan. 6, 1837.]

Realm.—The islands of Jersey, Guernsey, Alderney, Serk and Man, are *out* of the realm of England, and are generally termed British possessions abroad, or Possessions beyond seas.

Records, omission in.—There are two ways in which Orders in Council are defeated; one is by *refusing*, and the other by *omitting*, to register them. The former mode is considered open combat, and the latter secret strangulation, by which the mandates of the crown are rendered absolutely lifeless; for it must be observed, that unless the orders *are* registered, they are held by the Jersey and Guernsey Courts to have no force of law whatever. It seems that in former times, they were thorough adepts at these manoeuvres, for we find, that a very important Law passed in the time of Queen Elizabeth, to prohibit the Jurats, Viscount, Denunciateurs and Greffier from practising as Solicitors, was stifled in that way, and through which the present Deputy Viscount and Denunciators follow their possession as solicitors, and engross nearly all the practice of the Island, dividing between them about £6,000 per annum. Read the following extract from the Bailiff's statement in the case of Le Gallais and others *v.* De Veulle and another, before the Privy Council, respecting the appointment of a third denunciator:—“Previously to the nomination of the third Denunciator, the Bailly received a petition from the Solicitors of the Court, complaining of the injustice arising to the suitors, and to them as practitioners of the Court, from the Deputy Viscount and Denunciators being permitted to practise as Solicitors, and praying that an order might be issued to restrain them from so practising in future. The Bailly felt the propriety of such an order, but was deterred from making it from finding that it had been considered necessary, in certain ordinances issued in the time of Queen Elizabeth, to insert a specific prohibition, that the Viscount and Denunciators should not practice as Solicitors; but, upon reference to the Records of the Islands, it appeared that these Ordinances had not been inrolled there, and *without such inrolment they are not of authority in the Island*. Subsequent researches have induced the Bailly to believe that these Ordinances were in fact inrolled, though they are not at present to be found on the Records. A vacant space appears in that part of the Rolls of the Court, at the place where, according to order of date, these Ordinances ought to have been inserted; and the Documents in the Appendix shew that they *were* considered of force by the Royal Court.” From the Appendix:—“Before one of the Magistrates of the Island of Jersey. Personally appeared George Edward Evans, of Saint Helier's, Gentleman, and made oath that he

has carefully searched and examined the Records of the Royal Court of the Island of Jersey, from and including the year one thousand five hundred and sixty-two, to and including the year one thousand six hundred and nineteen, but he has not been able to find that any ordinances or orders purporting to be for the public weal and utility, and referred to in an act or order of the said Court, of the twenty-fourth day of September, one thousand six hundred and nineteen, or any other ordinances or orders, under the Great Seal of England, during the period aforesaid, have been registered or enrolled in the said Royal Court, or are upon the records or rolls thereof; but this Deponent saith, that in the year one thousand five hundred and sixty-two, in or upon the said records or rolls there is entered a commission under the Great Seal of England, dated the twenty-seventh day of June, in the fourth year of the reign of Queen Elizabeth (one thousand five hundred and sixty-two), and that after such commission there is a considerable blank or space, consisting of nine sides and a quarter of paper, left in the said records or rolls, having the appearance of the same having been left as appropriated for the registry or entry upon the said records of some document to follow the said commission of the length of six folios, and upwards of seventy-two words to the folio.

GEORGE E. EVANS.

Sworn at Jersey this 14th day of Jan., 1833,

before me, E. L. Bisson, Magistrate.—See *Solicitors*.

Recusation of Judges.—This is an exception made to a Jurat judging in a cause, whether it be a civil or criminal one. The recusation of Judges is frequent when the Bailiff, his Lieut. or any one or more of the Jurats are either in any sort directly or indirectly concerned in the cause, or if they are of kin to either of the parties, the other may except against their judging in it. If it happens to be the Bailiff or his Lieutenant that is recused, then the senior Jurat present supplies his place as the first competent judge: but then the cause is put off to any other Court day, which is to be at least a week after. This system of recusing judges is taken from the custom of Normandy, where it is first said that exceptions may be taken to a witness, and then further that less exceptions may serve to recuse a judge than a witness, because other judges may be found, but often no other witness. By the practice of the island a *cousin germain* or any nearer relation may be recused and the recusation might be made by the Judge himself. The recusation must be made in writing, be signed by the Greffier and be lodged in his custody (Chief of Police of St. Saviour's v. Durell, 1838). According to *Rouillé*, fol. 94, especial friends or enemies, or

those who for certain reasons, may be suspected of love or hatred, or who are parties, or have causes of the like nature, may be recused. *Terrien* observes as a general rule that a judge may be recused on a less cause than a witness can be rejected. The fine for causelessly excepting against a Jurat is declared by *Terrien*, folio 980, to be twenty livres, french money, but it is never levied in Jersey. The following is quoted from *Shebbear* :—" In 1736, in a cause between Joshua Pison, Lieut. Bailiff, and Michael Lempriere, grandfather to the present brothers, Michael recused the whole bench who were present. He recused Philip Dumaresq, because Pison's first wife was his sister. Charles De Carteret, on account of the lawsuits and disputes between them. Rawlin Robin because he farmed tythes belonging to the King. John De Carteret because he was nephew to the wife of Lempriere; and William Dumaresq because he was receiver general. The exceptions were allowed, and the cause referred to be heard by his Majesty in Council. In October, 1729, on a cause between Sbirel and Le Hardy, several Jurats recused themselves. Here then existed some sensation of conscience in the Court. On the 31st Oct. 1730, the judge delegate was recused, and cause adjourned; because a sufficient number of the Jurats were not present. On the 12th of June, 1739, on a cause between John Le Hardy and Mary Mauger, Le Hardy excepted against Michael Lempriere, and the recusation was allowed. The 2nd of October 1740, Michael Lempriere, recused Elias Dumaresq, on account of personal animosities; and the court was of opinion that they ought to sit in judgment on each others causes. The 19th of Feb. 1731, John Le Hardy recused some of the Jurats. The 21st of October, 1732, and on the 20th of April, 1738, he excepted against Michael Lempriere a Jurat. The Court did not allow the recusation; but in neither of these cases was Le Hardy either fined or imprisoned. On the 1st of June, 1732, John Le Hardy recused Michael Lempriere, not only respecting the cause then depending, but in all others in which he might thereafter be concerned. The Court declared Lempriere to be a competent Judge in that cause, and notwithstanding that opinion, Le Hardy was not sentenced to ask pardon of the jurat whom he challenged; but the Court allowed an appeal to King and Council. In 1731, John Le Hardy, Attorney General, recused some of the Jurats (Act of Court 11th Feb. 1781); the Court passed an act that the recusations should be lodged in the office in writing, and that each party requiring it should have authentic copies thereof, and the cause was deferred." But to come to later times :—In the case of Lieut.

Governor Thornton v. Godfray, in 1831, defendant recused the Bailiff, Messrs. De Carteret, Nicolle, Benest, De Ste Croix, and D'Auvergne, in fact all the Jurats excepting four, and mostly on the allegation that they bore enmity towards him, that an ill feeling subsisted between their families and his; and because he was, by general rumour, supposed to be the author of certain articles which had been published in a local journal called *Le Constitutionnel*, which articles animadverted on their magisterial conduct, and because they had taken undue parts in the matter then pending. By this manoeuvre defendant obtained picked Judges to hear that case, and as a necessary consequence had everything his own way. In Messervy v. Godfray, 1835 for the Constableness of St. Martin's before the full Court, defendant recused the judgment of three Magistrates who had on various occasions shown hostility towards him, and plaintiff recused the judgment of the Magistrates who decided the case in the first instance, and also Mr. Marett, because he had shown partiality towards defendant, thus, the whole bench were challenged; in consequence of this, the Attorney General (acting) concluded that the Court should signalize their reprobation of plaintiff's conduct by fining him £10, but inasmuch as they objected one and all to give any opinion on the case in consequence of the recusations, the Bailiff referred the matter to the Privy Council. In Nicolle v. Le Lievre 1835, defendant recused the Bailiff on the ground that he had been concerned in preparing *before trial*, the judgment of the Court in the case of Lieutenant Governor Thornton v. Le Breton, and on the presumption that he must necessarily have prejudices against him on account of several severe articles animadverting on his conduct which had appeared in *Le Constitutionnel*, the paper published by defendant, the Jurats of the day Messrs. Marett and Bertram held the recusation to be valid and ordered it to be sent to proof. In Macdonald v. the Parochial assembly of St. Helier, 1835, complaining that he had been surcharged in his assessment to the public rate, plaintiff recused the judgment of Judge Nicolle on the ground that he being a rate payer and member of the assembly had an interest in the cause, and consequently was not a competent judge, which was held to be valid. In Judge Le Couteur v. Aubin, 1836, for defamation, defendant recused the Judges Marett and Bisson, on the ground that they were personally interested in the question.—The Court decided that they could not judge in the case. In the Attorney General v. Nicolle, ex-Agent of the Impost, 1836, defendant recused the Jurats on the ground that they had already prejudged the case by pronounc-

ing against him in the States, as administrators of the Impost, and besides which they had an interest in the issue : recusation overruled. In *Constable of St. Brelades v. Benest*, 1837, defendant challenged the competency of Judge Marett as he was farther in law of the plaintiff, but inasmuch as the action was to recover payment of a parish rate, in which he was not personally interested, the recusation was overruled. In the case of *Godfray (Greffier) v. Nicolle (Judge)* 1831, an action for damages, defendant recused Judge Pipon, because *he had declared in the presence of witnesses, that on a former occasion, he decided a cause against defendant through party spirit.* The Court held the recusation to be valid. In the *Crown v. Hue and Amy*, 1837, which was a prosecution to recover penalties for falsifying an affidavit for the exportation of corn, Judge Le Maistre who signed the document having given evidence for the Crown, in which he declared, that the affidavit *was* falsified, and thereby prejudged the cause, defendants challenged his competency to determine the case, but the Court considering he acted in his magisterial capacity when he attested the affidavit, and as a private individual when he gave evidence, ruled that the recusation could not be received. In the *Att. Gen. v. Nicolle*, 1837, defendant recused the Jurat Bertram inasmuch as he was a witness and had given his desposition against him, thereby prejudging the matter, but the full Court, by the casting vote of the Bailiff De Veulle held that the rescusation did not lie.

Recusation of Witnesses.—According to recent judgments of the Court, persons within certain degrees of relationship cannot be called to give testimony either for, or against, a Prisoner, and the effect of those decisions has been, that in several instances the Attorney General has been obliged to abandon the prosecution of offenders, for want of sufficient evidence of strangers to ensure a conviction. By the civil law and custom of Normandy, as also by the modern French Code, consanguinity is a good objection to the competency of a witness ; but by the English law, with more reason, it only affects his credibility. The ground of exclusion is evidently based upon the presumption that persons nearly related, if permitted to give testimony, might be tempted to commit perjury ; but to suppose that the mere accident of being a degree more or less distant, can produce any such consequences, is a complete delusion. As the interests of Society require the punishment of those who have transgressed the laws, and there must necessarily arise very many cases where the nearest relations alone can have any knowledge of the facts, it is therefore high

time, that this custom was abolished. In the case of Thomas Manlahore, in 1836, produced at the bar, to hear information deposed against him, upon the accusation of having stolen a watch and other effects from his brother, in the house occupied by Mr. Peter Le Boutilier, of the parish of Trinity, the prisoner recused his brother, who had been brought as a witness for the charge, and the Court having admitted the recusation, the Procureur General declared that the prosecution must be abandoned ! In the *Crown v. De Gruchy*, 1838, indicted for having stolen certain wearing apparel, the property of his brother in law, John Blampied, an objection was taken by the prisoner to the testimony of Blampied as a witness for the Crown, inasmuch as by the custom of the island, relations of a certain degree were not qualified to give evidence either for or against a prisoner, the point was referred to a Full Court, when numerous precedents were cited in which a similar objection had been allowed : amongst others that of *J. Hotton*, 1824, charged with murder, when Elizabeth Becquet his niece, a witness for the Crown was recused ; and the case of *J. Hall* charged with stealing a watch from his brother whose evidence was also objected to. Although the objection was combatted at great length, and its pernicious consequences pointed out, the Court ruled that the recusation was well laid, in consequence of which the prosecution against De Gruchy failed for want of evidence. In *Le Breton v. Ennis*, defendant recused John Anley, a witness for plaintiff, because he was on the 20th October, 1836, charged by him, as Attorney-General, with having on the 8th of the same month, passed a false affidavit, for the exportation of corn ; and had thereby rendered himself guilty of perjury. At the time of the accusation, a law passed by the States on the 19th June, 1834, was in force, and on the 18th of August, 1837, Anley was discharged from the action, *because the law had then expired* ! Defendant maintained that plaintiff, as Crown officer, must doubtless have had good grounds for his prosecution, or else he would not have instituted it, and yet he called as a witness, in his cause, the very same person that he had charged with perjury ! Defendant demanded, that Anley be withdrawn from the list of witnesses. The Court (*Le Quesne* and *Duhamel*) considering that there was no record of conviction, overruled the demand.

Reclamations of Property.—A wife may reclaim at her husband's death, her estate, if sold or encumbered by him without her sanction being expressed by a participation in the deed : should she die first her heirs have the same privilege. A father cannot give, except during his life, a greater

share of his landed property to any one child, than the law specifies. His donation may be annulled by an action commenced within a year and a day after his decease. All sales of land belonging to minors may be revoked by them within a year and a day after they come of age.

Reduit au petits depend. (reduced to the small allowance) usually called starvation point, because the allowance is only 23d. per day, when a person is in custody for debt, to enable him to make general cession of his property for the benefit of creditors. See *Cession-general*.

Registrar.—The Registrar shall be entitled to receive ten sous, for the search, writing and signing of each extract from the Registry, if the Contracts or documents be of twenty years standing or less, before the time that the extract is demanded; the registrar furnishing paper when they are to be made on paper, and the parties the parchment if they are requested on parchment.

The Contracts shall be delivered to the said Registrar no later than Tuesday before noon preceding the Thursday when the first summons of the Court of Heritage shall be carried, upon pain that the contracts which might be neglected or not delivered in that way, shall be deemed as registered from the said day, and that the persons be they of the same family or others shall have the benefit of the said Contracts and exercise their rights in that respect; and in order that all persons shall be able to obtain a knowledge of the rights which they might acquire, according to the intention of the establishment of the said register, it is ordered that the Wednesday preceding the day the first summons shall be carried each term of heritage, shall be a day on which inspection of the Register shall be permitted to all persons without exception and without paying any thing. All acts of approbation of age, administrationship, of guardianship of interdicted persons and of minors, shall be registered in the public register of this Island, on pain of five livres penalty against those who shall omit it, to which those who neglect to register the acts of Procurations shall be equally subject.—*Code*, 1771.

Registry Office.—All title deeds and mortgages are inserted in a register placed under the care of an officer duly appointed: the neglect of their insertion invalidates the mortgage.

Register of Orders.—The Orders and Ordinances of the States shall be registered in a particular book, and shall not be mixed with other public affairs of the island, according to the ordinance established for that purpose on the 10th of Sept. 1603.—*Code*, 1771.

Remittance of Money.—If a debtor is directed by his creditor to remit money by the Post to England, and it is lost, the creditor must bear the loss. [Warwicke v. Noaks, Peake 67—Kenyon.] But a person so remitting should deliver the letter at the General Post, or a receiving house appointed by that office, and not to a bell-man in the street. [Hawkins v. Rutt, Peake, 186—Kenyon.]

Remonstrance is the preliminary process by which a party recovers compensation in damages for a personal injury, breach of contract, &c. It is a written declaration of the wrong which a party has sustained, addressed to the Bailiff and Jurats, and in which he petitions for redress. It is usually entered before the inferior Court, but if rejected, there is no act made, and consequently no appeal granted. In the case of Vautier and others v. Remon, 1837, where the plaintiffs entered a joint remonstrance, the Court held that their actions ought to be entered separately. A person who presents a Remonstrance against another for assault and battery, can demand the adjunction of the Crown Officer, and as this functionary usually takes the plaintiff's side, damages are generally awarded, and however small, they carry all costs. In the case of Payn v. Meservy, 1834, Plaintiff having interjected a remonstrance by means of his *Procureur* against Defendant's being sworn into office as Constable of St. Martin, the latter contended, that the remonstrance was not admissible: 1st. because a procureur had not a right to action in the name of his constituent as an elector; and 2nd, because the remonstrance was addressed to the Court as coming from Helier Payn, whilst in reality it was not him, but his procureur, who had signed it. The Court overruled the objections, and admitted the remonstrance. A woman who has been separated from her husband as to *property*, must, to recover compensation in damages for a personal injury, enter the remonstrance herself, in her maiden name.

Rents are considered as real and not as personal property. There is a difference in the rents. One sort is called *rente foncière*; this cannot be redeemed, except by consent of parties; but must remain a charge on the estate or house, on the security of which it was raised. The other is called *rente assignable*, or *rente crée* which is redeemable at any time. *Rente assignable* becomes *rente foncière*, after having been paid on the same estate for the space of forty years.

Rents, value of.—Originally a quarter of wheat rent was estimated by the value of wheat, and was paid in kind. The value of wheat being the least, likely to vary from one century to another, as nearly the same quantity of labour, will at one

time be required to produce the same quantity of wheat as another, our forefathers wisely fixed upon that commodity which approaches the nearest to what we should consider the standard of value, and which influences the prices of all commodities. The value of wheat rents has been at various times, established at certain rates in money, and according to the last valuation in 1797, the price of *froment de rente assignable* was fixed at 50 sols the cabot, equivalent to 20 livres per quarter; and a cabot of *froment de rente fonciere* was valued at 54 sols the cabot, or 21 livres 12 sols the quarter. These are the rates according to which they are now paid. Supposing therefore an estate to be valued at 10,000 *livres*, the annual interest of this sum, at five per cent, being 500 *livres*, the estate is said to be worth twenty five quarters. In the purchase of landed estates, or of houses, there is generally only one fourth part of the amount paid down; the other three fourths remain as rents.

Rent, distraining for.—By the common law of the island, it is competent to distrain any effects whatever that may be found on the premises for payment of Rent; not only for that which is due and in arrear, but for that which is accruing due: formerly sequestration was allowed for the whole of the unexpired term of a lease, but of late, the Court has sanctioned a preference for only one year in advance. If there should be any danger of the sequestered effects being carried off the premises, the officer making the distress, may put them under lock and seal, or remove them to a place of safety. A similar custom lately prevailed in the Isle of Man, and also in Scotland, but by a recent statute, 1 Vict. 23, sequestration in the latter country is now allowed only for rent already due, and the effects cannot be removed from off the premises.

Rent, giving for ever to, is much used in the island, and such rents are accounted the best sort of estate a man can have. A man that has either house or land which he wishes to dispose of, gives it; that is to say, *lets* it, or more properly *sells* it to another to hold to him and his heirs, for ever, paying yearly so many quarters, or bushels of wheat rent as they can agree for; to which payment he that takes binds himself and his heirs for ever. Sometimes he that has occasion to take up money on his estate, sells so many quarters, and charges his whole estate with the payment for ever.

Rent Charges.—The system of rent charges is very complicated, seldom intelligible to strangers; and few natives, except professional men are acquainted with it. It offers the means of investing small sums in the purchase of real property

without the inconvenience of its being liable to be paid off like a mortgage. The debtor of rents on the other hand, instead of being obliged to wait till he has accumulated a sum sufficient to pay off his mortgage, say £500, may disencumber himself gradually of the debt, by buying and assigning to his creditor small sums of rent, as low as £8, or £10 at a time. The Jersey freeholder has the further advantage of being independent of the rentholder, as long as he can pay him his rent. On the other hand, an English mortgagee may call in his mortgage at anytime to the great inconvenience and even distress of the mortgagor. It is evident that a person thus situated, even when he offers the best security, is neither so favourably nor so independently situated, as the humblest Jersey rent payer. Again, rents being a real property, cannot be so easily squandered away as chattels by improvident individuals; and as they follow the provisions of the Norman law of inheritance, they cannot be transferred from one person to another by unjust or capricious wills. When a person buys an estate, those rents are a substitute for an English mortgage. The buyer, if he cannot pay for the whole, remains charged with rents, the amount of which can only be ascertained from the Public Register, so that any one having dealings with him may always know, whether, and as far as real property is concerned, he has to do with a man of good substance or not. This is technically called his *guarantee*. By law a man must pay off one fourth of the purchase of real property either in money or rents, and he may remain charged with the other three-fourths. This evidently facilitates the disposal of real property by extending the sphere of competition, and enabling many to become freeholders, who could not be such under a different order of things. Most of the freeholds in Jersey are more or less encumbered with rents; but if the owner is an industrious man, he pays his rents yearly, gradually diminishes their quantity, and instead of being liable to be turned out of his farm as in England, he may think himself as good as the first gentleman in the land. All transactions in rents are registered in an office for that purpose. Bonds may also be registered on a special application to the Royal Court. All those have a preference over simple contract debts in bankruptcies and have a right to be paid in full according as they are ancient in date. Rents are generally bought at 20 years purchase, or 5 per cent interest. They are seldom paid in kind, or rather, every quarter of *wheat rent* was in consequence of the then existing abuses, commuted in 1797 into a yearly payment of sixteen shillings and eight-pence. The rents due to the King and a few other

privileged rents form an exception, and are still paid according to the price of corn. Some of the rents are *fondiere*, or ground rents, that is, That the owner cannot assign or buy them off, without mutual consent, so that the incumbrance on the estate is perpetual. They are worth 1s. 4d. a quarter, a year more than the assignable rents, and sell generally at 25 years' purchase. All these rents are brought into the market, and vary more or less, in price, according to the demand, or the goodness of the guarantee; not unlike the transactions on the Stock Exchange. The system of these corn rents is very ancient, and on the whole is well calculated for this Island.—[Durell.]

Rent Charges, abuses of.—There are disadvantages annexed to Rent charges, the first of which is, that these rents may be split into mere fractions, and that to collect £100 a year, you may have to go to as many, or more renters, on different parts of the island, and in case of bad payers, one must have recourse to a legal process, which though cheap and summary, yet causes some delay and expense, and till lately obliged one to attend the Court in person or by an Agent. Nor can the debtor be sued out of Term. Add to this that forbearance aggravates the evil, that an embarrassed freeholder, will only pay the most pressing, and that after having run his rents one with another 4 or 5 years in arrear, he becomes a bankrupt by cession, (*cessio bonorum*) so that after having subsisted during that time at the expence of the renters, such an individual leaves his estate encumbered with from 20 to 25 per cent more than he owed when he first became insolvent. The law expenses attendant on the bankruptcy, or the conducting of the *Décret* as it is called, depreciated the estate still further till a very heavy loss is realized by the several mortgagees. There are also some nefarious practices attendant on rents some of which I may barely mention. A. buys an estate from B. worth £300 in rents, but as he cannot clear off one fourth of the purchase money, or £75, a deed is executed whereby the estate is nominally sold for £400, the fourth of which is cleared off by a fictitious sum of good and lawful money of the country. The property thus remains in fact charged with rents to its full value, so that on the least reserve or depreciation, the owner inevitably becomes a bankrupt. This is what called in derision, *a contract in the air*, (*contrat en l'air*). A. has got an estate already deeply incumbered, but wishing to raise money, he applies to some unprincipled person or other, and who having no property himself, can offer no additional security; to whom he conveys it for more than it is worth, say for £500, what is worth but £400. He then goes into the market

and sells rents on the mock purchaser, perhaps a mere man of straw, who after the job has been completed, resigns his bargain to the first seller, who thus becomes chargeable with all the rents he has created. But he cannot hold out long under such an accumulating pressure of debt, he becomes a bankrupt, and the purchasers of rent who had but this delusive security, inevitably lose their property. Again : A. has debts on rents or on bonds ; he does not owe to the amount of his freehold, but on the whole, he is insolvent. Wishing to favour one of his creditors B, he conveys him a part of his freehold in payment of a simple contract Bond, which enables this worthy creditor B. to be paid in full, when his brother creditors may not perhaps receive half a crown in the pound. The only precaution that the parties have to take is to have those deeds executed unknown to the other creditors, and at least ten days before any act of bankruptcy is committed, as otherwise those deeds would be cancelled.—And this is a poor remedy indeed against an experienced sharper ! Again : A. sells a piece of ground for building, and a good house is raised upon it in due time. From the timber merchant to the glazier, the credulity of all trades is put in requisition to furnish supplies on credit. The builder sell rents on the house in the mean time, till after having spent their produce he too becomes a bankrupt, the renters, or the seller of the land, being registered debts, take to the house, and the tradesmen who had in fact furnished the means of building it, lose the whole of their claims, and have no other consolation left to them, than that of having added one good house more to embellish the town of St. Helier. Again : A man applies to the Court to have his wife's estate separated from his own, (*separation quant aux biens*), whereby the lady recovers all the rights of a *single woman*. The husband's chattels in some cases soon disappear, and as to the real property, the greatest part is conveyed to the wife : enough being just left, to prevent the Court from refusing to make him a bankrupt. I should remark that all freeholders have an undoubted right to renounce or make their *cessio bonorum*, while others who are not freeholders, are entirely subject to the discretion of the Court, who if not satisfied with their honesty, may suffer them to remain for years in prison. All deeds ought to be executed in public before the Bailiff and two Jurats. In case of the illness of either of the parties, those deeds were at first on payment of a small fee allowed to be executed in private. In time that grew into an abuse, and most people who either disliked the publicity of that ceremony, or a long attendance in Court, had recourse to that indulgence. The

next step was that when any individual thought it prudent to conceal his own transactions from his creditors, he naturally had recourse to this very convenient expedient. Hence arose a fruitful source of fraudulent bankruptcies ! The only way to prevent this abuse would be to abolish the private execution of deeds except in cases of real and well attested illness. The remedy which the law affords now to the creditor, is that when he suspects any deed affecting his interest is about to be executed by his debtor, he may lodge an inhibition with the Bailiff, which prevents the debtor from selling any real property, till the question has been tried before the Royal Court. There are however inconveniences in allowing registered debts to have a preference in all cases.—A. has an estate worth £2000 incumbered with £200 worth of rents, and £1000 of personal debts, but being desirous of disinheriting his family and cheating his creditors, he executes a sham bond that he has borrowed £2000 from B. The bond is then registered in due form in the Royal Court where it may be forgotten, till A. departs this life, when B's debt has the preference, as under those circumstances of insolvency, the lawful creditors are obliged to abandon their claims ! These nefarious abuses are mentioned, not only to guard the unsuspecting stranger against them, but in the hope, that the exposure of such blots on the character of the country, and on the integrity of those unprincipled practitioners, who lend their assistance to such proceedings, may in time be effectually removed. These are some of the most glaring and nefarious practices connected with rent transactions ; but it is unnecessary to enter into further details on that subject. When it begins to be whispered that any man's affairs are embarrassed, all his freehold property becomes nearly unsaleable, for the obvious reason that in the case of an approaching bankruptcy, the last purchasers would lose their rents by being the first to be ejected. It is indeed an evil sign of the times when property is advertised week after week, and remains unsold. The individuals cannot mistake the opinion the public entertains of his credit, and such a state of things is generally the prelude of a bankruptcy. To say that a man's *guarantee is bad*, or that he is embarrassed, is *actionable*, because it tends to prevent the sale of his property.

Hence people are very careful about what they say on the subject, and many an unfortunate stranger has been the victim of not having received seasonable advice, before buying property which was puffed up in the newspapers, but about which it was already understood in every quarter, that an ejectment would be the inevitable consequence. To enter fully into the

various natures of all those frauds would rather require a pamphlet, than the limited extent of a Note. I have avoided a technical phraseology as much as possible to be intelligible to strangers. It is not sufficient that the guarantee of the seller of real property should be good. Reference must be made to the solvency of the individuals from whom he may have made purchases at any former period. Thus A has bought 30 quarters of rent from B. and sold it to C.—Subsequently B. became a bankrupt, which draws on the ruin of A. after it, so that B. is dispossessed of his rent, which finally goes to a fourth person, who is technically called the tenant of B. One ought to be fully impressed with the extreme caution necessary to be used by all, but by strangers in particular, when they buy real property in this Island. The danger may however be easily avoided by adhering to the general rule of never purchasing without a good guarantee, or purchasing from a man of good freehold property. To obtain that indispensable information, it must be done by applying to some respectable professional man, who will ascertain the amount of the real property of the seller from an inspection of the public Register. and by whose advice the applicant ought to allow himself to be directed. — [Durell.]

Renunciation and Cession in Guernsey.—A person who from losses in trade, or other unavoidable calamity, finds himself insolvent, may avail himself of the privilege of cession; which is done by appearing in open Court, declaring his renunciation of all his property, and swearing that he will deliver all his moveables. (his clothes, bed and arms excepted) to and for the benefit of his creditors, and, that if *providence should enable him hereafter to pay his just debts, he will do so.* Formerly a person thus renouncing, wore a green cap, and divested himself of a girdle; but this humiliating exposure has been discontinued for some years. See *Saisie*. [Martin's Brit. Poss.]

Renvoye par incivilité d'ajournement (Sent back though informality in the summons), which is generally when the *billet* or summons, does not agree with the *bille* or declaration. The following precedents may be quoted:—Rafter v. Giffard, 1836, in which the word *Advertisement* was spelt *Avertisement*—Blanchard v. Bromer, in which *Jour* (day) was spelt *Jout*—Machon and others v. Touet, 1837, in which plaintiff's christian name was spelt *Lorent* instead of *Laurens*—Blanchard v. Clark, 1838, in which the christian name of the latter was spelt *Melbourne* instead of *Milbourne*.—Horman v. Buesnel, 1838, in which word *amena* was spelt *ammena*, and *mou*, *m'on*—Aubin v. Hammond, 1838, in which the word *de* (of) was repeated

thus, *de de*. In all these cases the parties were sent back through the above informalities.

Re-opening a case.—If a party should be adjudged by *default après contestation*, he may get his case re-opened by interjecting a remonstrance before the full Court, and lodging the amount of the judgment in the hands of the Grefier, together with 5 per cent. commission, which it is said that officer is entitled to, for keeping money in safe custody. The latter condition may be dispensed with by consent of the plaintiff, as in the case of *Le Breton v. Ennis*, or on refusal thereof, by an application to the Privy Council, as in the case of *Attorney - General v. Whitfield*. The following Order sets forth the particulars of the latter case:—At the Court at Windsor, the 12th of Dec. 1838. Whereas there was this day read at the Board a Report from the Judicial Committee of the Privy Council, dated the 10th of Dec. 1838, in the words following, viz. “His late Majesty having been pleased, by His Order in Council of the 1st of March 1837, to refer unto this Committee the humble Doleance and Petition of George Whitfield, of London, late of the Island of Jersey, Distiller, setting forth, that in the year 1833, the Petitioner repaired to the Island of Jersey, with the view of forming an establishment for Distilling, as well from foreign as from articles the growth and produce of the Island, and to export the spirits so manufactured to foreign parts. That the Petitioner accordingly hired the necessary buildings to that effect, and at considerable expence purchased and erected the required implements to carry on his trade, which he did without molestation or hindrance from the above stated period to the beginning of September 1836. That in commencing his said business, the Petitioner applied to the proper authorities to know what Laws existed in the Island to regulate Distilleries, being desirous implicitly to observe them, and thereby avoid all difficulties that might arise in carrying on his trade. That the only document put into his hands was a set of printed regulations passed by the States in 1790, prescribing the mode of levying the Insular Impot of Foreign Spirits consumed in the Island, and the declarations necessary to be made to the Collectors, not one Article of which refers to Distilleries or to spirits manufactured in the Island. That on the 1st of September 1836, a Warrant (*Ordre de Justice*) was obtained at the suit of Thomas Le Breton, Esquire, Your Majesty’s Attorney General, signed by Sir John De Veuille, Bailiff of the said Island, authorizing the Officers of the Royal Court to seize and sequester provisionally all Spirits extant on the premises occupied by

the Petitioner, which Warrant was accordingly executed by the Under-sheriff of the Island. That on the 20th of the said month of September 1836, a second *Ordre de Justice* was issued by the Bailiff on the representation made to him by the Attorney General, that the Petitioner had for some time previous committed very extensive frauds, not only affecting the Impots of the Island, but also the Revenue of Customs in England, in having manufactured a greater quantity of Spirits than he had declared to the Collectors of the Impots, and thereby incurred fines and penalties to the amount of £3,989 1s. 6d. sterling. That by virtue of this second Warrant (*Ordre de Justice*), the Officer of the Court seized all the personal property belonging to the Petitioner in the Island, sealed up his dwelling house, manufactory and stores, and has since sold all his effects for the purpose, as it was stated, of discharging the penalties alleged to have been incurred by the Petitioner.

That on the first intimation received by the Petitioner, that these proceedings would be unremittingly pursued against him in Jersey, and being assured in the mean time that informations had been lodged with the Board of Customs in England, alledging that he had committed frauds to an enormous amount against the revenue of Great Britain, the Petitioner left the Island instantler in order to justify his conduct with the authorities in the Mother Country, where he possessed considerable quantities of distilled spirits in Bond, and against the revenues of which he was accused of having committed the greatest frauds. That in consequence of the information given to the Commissioners of Customs, a minute investigation of the Petitioner's transactions has taken place, the result of which has fully satisfied that Hon. Board that his conduct was unimpeachable, and they have restored to him all the Spirits he had bonded in England. That on the 28th January 1837, the Royal Court, at the suit of the Attorney General, condemned the Petitioner to pay the above enormous penalties, on pain of prison, and thus virtually banished him from the Island. That on the 15th Oct. 1836, the Petitioner was, by an act of the same Court, declared insolvent (*ses biens en désastre*), a proceeding that will very shortly necessitate another Decree adjudging the whole of his property real and personal to his Creditors generally. That the Petitioner left the Island two days after the first Warrant was obtained against him, and not having returned to it since, or authorized any person to represent him there, all the Judgments of the Court in these matters have been given ex-parte. That the Petitioner is advised that no law or precedent exists

in the records of the Island, that could possibly authorize the Attorney General or the Bailiff so to seize and confiscate his property ; and that moreover he has not incurred the penalties for the payment of which such seizures are stated to have been made. That if the above illegal, arbitrary and oppressive proceedings on the part of the constituted Authorities in Jersey were not speedily stopped, and the Petitioner could not obtain that redress to which he humbly, but firmly, considers himself entitled, they would not only operate his utter ruin, as regards his pecuniary circumstances, but would inevitably have the effect of destroying his character as an honest man, a fair dealer and manufacturer ; and humbly praying His late Majesty provisionally to order the Royal Court of Jersey forthwith to stay all further proceedings against the Petitioner, to direct the said Royal Court to lodge at the Privy Council an authentic copy of all Laws and Regulations registered in the Island relative to the levies of the Impots and Distilleries, to allow the Petitioner to be heard by Counsel in support of this Doleance and Petition, and against the proceedings taken against him ; and further, that if after mature investigation of the case, no frauds can be substantiated as having been committed by him, it might please His late Majesty to order the entire restitution of his property so illegally and arbitrarily disposed of by the Authorities above stated, together with ample and just compensation in damages for the wrongs he has thereby sustained, as to His late Majesty should seem meet.

The Lords of the Committee, in obedience to His late Majesty's said Order of Reference, proceeded to take the said Doleance and Petition into consideration, on the 22nd February last past (when Their Lordships ordered the matter to stand over for one month,) and again on this day ; and Their Lordships having heard Counsel on both sides, do agree humbly to report to your Majesty as their opinion, that the said George Whitfield ought to be allowed to bring his case to a hearing before the full Royal Court of the Island of Jersey, upon the issue of the 15th October 1836, upon his paying the costs of the proceedings subsequent to the 15th October 1836 ; that all such costs incurred in Jersey be taxed by the Greffier of the Royal Court ; and that the said full Royal Court of the Island of Jersey ought to be directed to hear the same ; and in case Your Majesty should be pleased to approve of this Report, and to order as is herein recommended, then Their Lordships do direct that before the said George Whitfield shall be entitled to have his Petition so heard by the full Royal Court of the Island of Jersey, he shall pay to the Royal Court of Jersey, or their

Agent, the sum of one hundred and sixty-two pounds sterling, for the costs already incurred on this Petition before this Committee.

Her Majesty having taken the said Report into consideration was pleased, by and with the advice of Her Privy Council, to approve thereof, and of what is therein recommended, and to order, as it is hereby ordered that the same be duly and punctually observed, complied with, and carried into execution : Whereof the Bailiff and Jurats of the Royal Court of the Island of Jersey for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly. (Signed) C. GREVILLE.

Repairs.—No Tenant in Jersey ought ever to enter on possession of a house until such alterations as may have been promised, are actually completed ; and though the landlord should be bound, by a written agreement, either to put his house in repair or to keep it so, his neglect cannot be made a set off against the rent, but may be grounds of an action for damages as in the case of *Rafter v. Duheaume*.

Retrait Lignager.—The *Retrait Lignager* was abolished by an Order in Council in 1834. Originally that law might have been proper, but latterly it had become liable to great abuses ; for instance, if a kinsman, or the Lord of the Manor thought that property had been sold advantageously, he contrived to get the bargain for himself, or to extort a sum from the buyer. If the bargain was set aside, the buyer not only lost the chance of any improvement which might have taken place in the value of the property, but nearly a twelve month's interest of his purchase money.—The *Jus Protimeseos*, or *Retrait Foncier*, has been continued, but the person who avails himself of his right to claim it, is bound to pay all expences to be incurred in the proceedings. The right of action, like most others of the same nature is limited to a year and a day.—[Durell.]

Reversionary Legacy, attachment of.—In *Blake v. Le Feuvre*, an action to show cause, why an attachment in the hands of the Executors to the will of Mr. John De Caen, for payment of the sum of £40, should not be confirmed ; it appeared that Plaintiff had obtained a judgment against defendant for £5 damages and costs—which in the whole amounted to £40 : that defendant had a reversionary legacy of £250 in the 3 per cent consols left him by Mr. John De Caen, and that he had disposed of the same to a Mr. Woolcock for £189, who was allowed to intervene in the cause. It was contended for Le Feuvre and Woolcock that the attachment was illegal, inasmuch as the executors of the will were in duty bound to

pay the legacy to the legatee only. It was maintained for Plaintiff, that the attachment was perfectly legal—that no assignment of the legacy had been made for a valuable consideration, and that it did not revert to the legatee until the death of the testator's widow. The Court confirmed the attachment with costs.

Revocal of Judgments.—In the Crown v. Mallet and Vardon, 1833, an action for payment of fines levied on defendants, for their defaults at the Boys' Militia Drills; on the plea that they were old enough to join the ranks, the Court discharged the former and condemned the latter to the payment of fine and costs, grounding their decision on the eligibility of the one, and the non eligibility of the other, owing to the difference in their ages. But on Vardon's Counsel remonstrating with the Court on the distinction, they *revoked their judgment* and discharged Vardon also. Again: in the cause between Vibert, La Follet and others, in 1834, to recover satisfaction for a note of hand, protested for non-payment, the Jurat De Ste. Ouen was of opinion to admit defendant's offer to pay the demand and costs. The Jurat De Rozel to adjudge him to the debt and costs. The Bailiff De Veulle gave his casting vote on the *former* side, and judgment was recorded accordingly: but *a week afterwards*, he changed his opinion, *revoked* the judgment he had given, and gave his casting vote on the *latter* side. Defendant's Counsel protested against this proceeding, but nevertheless the judgment was altered.

Revue de Justice.—A Committee elected for the purpose of examining the condition of the streets and highways.

Riding on Shafts.—The penalty for this is 15 livres, or 12s. 6d. and in default of payment an imprisonment.

Royal Assent, treated contumaciously.—By an Order in Council of 1816, the Governor or his Lieutenant is bound to give notice to the Privy Council of every act which shall from time to time be passed by the States, by which any money shall be raised either by rate, or otherwise. Conformably to this law, Lieut.-Governor Thornton, sent up an Act of the States of the 5th of March, 1834, authorizing the Committee of markets to borrow a sum of money, at 4 per cent. interest, sufficient to purchase 102 quarters of wheat rent due from the markets, in order to prevent its becoming *fonciers*. The act having received the Royal Assent, was returned, accompanied by an Order in Council confirming the same, and laid before the States, on the 6th June, 1834, when Judge Marett moved the States, that the Order should be treated with contempt, because *they* had not given any orders for the said Act to be transmitted to the Council Board. The fact was, the States wished to usurp the

power of levying money for the public service, without the consent of the Crown !

Rules of the Gaol.—There is no such privilege to be purchased by debtors in Jersey or Guernsey, as in London, called living with the rules of the Queen's Bench, that is a certain distance from the prison. A debtor however in both Islands may procure a temporary enlargement from sun rise to sun set by giving bail to the officer—and if his health materially suffers by incarceration, an instance has been known in each island, in which the Court has allowed the debtor to live out of Prison altogether, on giving bail that he would not leave the Island.

Run-away Debtors to France.—It may perhaps be of assistance to many who are suffering from the misconduct of fraudulent debtors, to be informed that the Cour Royale of Douai, in 1834, decided in the case of "*Wellesley v. Tourasse*," that proceedings could be effectually taken in France by a French citizen before the French tribunals upon a bill of exchange drawn and accepted by an Englishman in England, and after its dishonor, endorsed to a French citizen, for the express purpose of enforcing payment, even though the formalities required by the Code de Commerce had not been complied with in the framing of the bill or the form of the endorsement. The circumstances in the case above referred to were briefly these :—Mr. Long Wellesley, then resident in England, being indebted to Mr. Phillips, the auctioneer, accepted a bill of exchange drawn by the latter. The bill, when at maturity, was dishonoured, and proceedings being taken upon it, a judgment in the Court of King's Bench was obtained against Mr. Wellesley, but which judgment could not be enforced against Mr. Wellesley's person by reason of his parliamentary privilege. On the dissolution of Parliament Mr. Wellesley removed to Calais ; the bill was subsequently endorsed by a commercial house in London, who were then the holders of it, to their correspondent, M. Tourasse, a merchant in Paris, the endorsement being in blank, and not stating consideration or the other circumstances required by article 137 of the Code de Commerce. [Art. 137. L'endossement est date. Il exprime la valeur fournie. Il énonce le nom de celui à l'ordre de qui il est passé.] M. Tourasse placed the bill to the account of the firm from whom he received it, and then caused Mr. Wellesley to be arrested, and the question of his right to recover was discussed before the Civil Tribunal of Boulogne, who decided against M. Tourasse. M. Tourasse then appealed to the Cour Royale of Douai, who annulled the judgment of the Civil Tribunal, and

condemned Mr. Wellesley to imprisonment until he paid M. Tourasse's demand with all costs. In pronouncing this judgment the Court entered very fully into the consideration of the various objections raised on Mr. Wellesley's behalf, as to the proceedings in England barring M. Tourasse's right to sue in France; the endorsement of the bill after it was due; the circumstance of M. Tourasse being, in fact, but the nominal plaintiff; the informality of the bill with reference to the acceptance and endorsement not being in accordance with the requisitions of the Code de Commerce, &c.;—all these were, however, decided in favour of M. Tourasse. An excellent report of the case, and the grounds on which the Cour Royale decided, is to be found in the *Legal Observer* for July, 1835. Relative to debts, the *mala cruz* of the *Code Civile* against foreigners is this:—"Tout jugement qui interviendra au profit d'un Français contre un étranger non domicilié en France emportera la contrainte par corps."—(Sec. ii., tit. iii., art. 14.) "Avant le jugement de condamnation, mais après l'échéance ou l'exigibilité de la dette, le Président du Tribunal de Première Instance dans l'arrondissement duquel se trouvera l'étranger non domicilié, pourra, s'il y a de suffisans motifs, ordonner son arrestation provisoire, sur la requête du créancier Français. (Sec. ii., tit. iii., art. 15.) Now "après l'échéance ou l'exigibilité" being indefinite and without limitation, a debt or bill may be endorsed over to a Frenchman five, ten, fifteen years after its protest in England, and as there is no exemption of privileges, the first Prince or Duke may "sans cérémonie" be thrown into prison in France for a bill given and protested in England 15 years ago, yet endorsed over to a Frenchman only the day before. Against this bill the party arrested cannot object the original want of value received, or that it was an usurious or gambling transaction. And it is doubtful even if proof of minority at the time he gave his acceptance would avail him, the French court being alone called on to decide the validity of the present endorsement, and that it is "au profit d'un Français," but incompetent to enter on any question touching its original voidability in a foreign country. A previous judgment of an English court might here affect the decision of the French tribunal, since a judgment being a matter of public notoriety, the Frenchman might be supposed to have had sufficient notice of the baseness of the instrument he received. Yet a French merchant sued and arrested an English broker for the amount of a policy of insurance, and although the broker put in exception his bankruptcy, which had been regularly gazetted, honourably passed, and certificate signed,

and was defended by the ablest counsel, and we believe more than once an appeal was made to higher courts, the broker invariably was cast, and the French shipowner gained his judgment and costs."

The truth is, the French courts assume to be more a court of equity than of law, and urge that, once proved, a debt which is a fact cannot be destroyed by technicalities which are fictions; they thus being not bound down to the letter of the law, guided by what may appear its spirit, probably has occasioned the contradictory judgments of the different courts, and the constant quashing of the judgments of one court by the other. The fallacy, however of the notion of justice without strict law has been incontrovertibly proved by Blackstone. The debtor who leaves England from dread of his creditors, certainly if pursued by the way of endorsement through natives, leaps out of the frying pan into the fire, for he throws away bail, and the innumerable quirks by which the attorney knows how, if not to defeat, to gain time; he deprives himself of every plea of defence, and the benefit of the Statute of Limitation and the Lords' Act; if a bankrupt risks the ripping up of the commission, he subjects himself, whatever be his rank, if not above sixty years of age, to four years' imprisonment, should his debt be near £40., to ten years should he owe £300. If, in addition to this the French courts will carry into effect English judgments, we may soon expect to see the return from France of many of our countrymen, to get rid of whom, and of foreigners generally, whether beneficial or not to England. We sincerely believe it to be the policy, design, and desire of the Government of France, to effect this purpose, although they swallow a camel, they strain not at a gnat.—B * * [Times.]

Rule of the Courts at Westminster, serving of.—If a rule be granted by any of the Courts at Westminster, for a party living in Jersey or Guernsey, to show cause, it might be served by a private individual residing on the spot, and an affidavit of the service be made and sent up to London. It is immaterial *where* the service takes place; all the Courts require is that the party *shall have notice*, before they make the rule absolute on him. If the rule could not be served in the ordinary way, which is by delivering a copy personally, the Courts would, on an affidavit that due diligence had been used to find the party without effect, order that service, by leaving a copy at the party's residence, or sending a copy by post, postage paid, should be deemed good service, and in default of appearance pursuant thereto, would make the rule absolute.

Sabbath, regulations for observance of.—After the Bell shall have ceased to ring, and Divine Service shall have commenced, persons shall not be suffered to remain in the Church Yards; and if any one is found there, he shall be liable to a penalty of twenty sous. Those who shall be found at Taverns on a Sunday during Divine Service, shall be liable to a fine of twenty sous, and the Landlord or Landlady, that of ten livres, and to forfeiture of their Licenses, if the case deserves it: and those who shall be found drunk in any place that day, shall pay twelve sous for the first time, twenty four sous for the second, and sixty sous for the third in the space of one month, which shall be levied by the Constables or Centeniers upon the first goods of the delinquents, and in default of goods, upon the Hotel keepers, found in default. No person shall be allowed to carry a bundle or burthen, on pain of thirty sous and confiscation thereof. Those who shall swear at any time, be it by inadvertence or in a fit of anger, shall be subject to 10 sous penalty, and two livres for the oaths or blasphemous words; and double penalties for the second offence, and for third the offender shall be presented in Justice and punished according to his demerit. The Constables or Centeniers shall have power to seize for the pecuniary penalties on the first goods of the offenders, and in default of payment, shall sell them by Auction on one of the days of the week in the usual form, and the penalties shall be applied to the use of the poor of the parish where the offence shall be committed. Swearers and blasphemers not able to pay shall be put and detained one hour or two in the Parish Stocks, by the Constables or Centeniers at their discretion. Tavern keepers shall neither sell nor send out liquors, during divine service on Sunday, nor later than 7 o'clock in the evening, from Easter to Michaelmas, nor after 5 o'clock in the evening from Michaelmas to Easter, on pain of twenty sous, against the person who shall be found in contravention, and ten livres against the Tavern keeper and forfeiture of license if the case merits it, which penalties shall be levied on the spot by the Constables or Centeniers, and upon the first goods of the delinquents in case of refusal of payment. The Constable shall render an account for the benefit of the poor of the above penalties to be distributed extraordinarily.—*Code*, 1771.

Sacrament Sunday is once a quarter. On the previous Saturday, the Court does not sit, the customs of the country having provided that the magistrates should have one clear day to purge their consciences before they approach the Lord's table. Nevertheless, the Bailiff and two Jurats attend, to ratify the

the passing of Contracts which are pretty numerous : but, happily, this formality does not involve any responsibility on the Magistrates ; hence, there is no danger of remorse, or cause for uneasiness from the " silent monitor," the whole resting entirely on the shoulders of the parties and their *Ecrivains* ; the latter, like the Jewish scape goat, being laden with all the sin, if any, of the transactions.

Saisie in Guernsey.—This is a remedy granted to a creditor when his debtor becomes insolvent. There are three kinds of *saisie*. The *saisie* is called *mobilière*, when before the renunciation, the creditor has obtained an Act of the Court, and takes possession of the debtor's estate, the revenue of which he applies towards the liquidating of his own claim, the debtor still retaining the property of the estate. The *saisie* is *héréditaire* when the debtor has renounced, or by process of law, been forced to give up his estate in favour of his creditors, of which the said *saisie* becomes administrator, without prejudice to his own personal claims. The *saisie* becomes *propriétaire* when he who held the *saisie mobilière* or *héréditaire*, has by some act which is deemed binding, made it his own ; or when in the regular process, one of the creditors has accepted the *saisie*. In either case, the *saisie propriétaire* is in the place of the original debtor, and answerable for all the debts that can be proved. [Martin.]

Savings Banks.—The 9 Geo. 4, c. 92, intituled " an Act to consolidate and amend the laws relating to Savings Banks, dated July 28, 1828, and 3 and 4 W. 4, c. 14, intituled " an Act to enable depositors in Savings Banks, to invest money with the Commissioners for the redemption of the National debt, and to amend an act of 9 Geo. 4, c. 92, to consolidate and amend the laws relating to Savings Banks, dated June 10, 1833, extend to Guernsey, Jersey and Man, and have been transmitted to the authorities of both Islands, and registered in Jersey, by order of the States on the 7th April, 1834. By an Act of the States, passed in June, 1834, which received the Royal Assent, certain functionaries of the Island were appointed to act in the place of those mentioned in the Parliamentary statutes, which are unknown in the Island, and the rules of the Bank have been certified by the Barrister, Mr. Tidd Pratt. In Jersey, the States voted annually 2000 francs, and in Guernsey £70, for the support of their respective institutions.

Seal of the Island.—This is kept by the Bailiff who cannot use it unless assisted by three Jurats. It is kept in a purse, sealed with the private seals of the three Magistrates who

were present at the last opening. When occasion requires, the Bailiff delivers the purse into the hands of the then assisting Jurats, who finding the seals entire break them open, and having done with the public seal, put it again into the purse sealed as before, and return the same to the Bailiff or his Lieutenant, as the case may be. The seal is affixed with green wax, to all acts or deeds, or whatever else shall require it. The right and power of using it for ratifying contracts or deeds of bargains and sale, and other purposes, was granted by Edward the First, as may be seen by the following translation of the Patent, addressed to the Bailiffs of Jersey and Guernsey :—

“ Edward, by the grace of God, King of England, Lord of Ireland, and Duke of Aquitaine, to the Bailiff and Jurats of the islands of Jersey and Guernsey, greeting. Whereas our subjects of the above named islands have suffered very frequently heretofore divers losses, and been exposed to no small dangers, sometimes on sea by shipwrecks, and sometimes on land by depredations, and by various other casualties, chiefly because we have had no seal hitherto in the islands, by which the briefs of our subjects in those parts could be attested, and their affairs be more speedily investigated and adjusted. We, being desirous, for the common good of our subjects in those parts, to provide a known and certain remedy for their dangers and losses, have willed that a certain seal of our own should be there used, and which we have caused to be provided and transmitted, in order that, for the future, such briefs as our subjects of the aforesaid islands have been accustomed to enroll in our chancery in England, and which for the future they may wish to enroll, and such agreements and contracts as may have been executed in the same place from time to time, and which heretofore have been only verbal, and not reduced into writing, shall in future be signed by this same seal. And wherefore we command you to receive that seal, and cause it to be publicly made known by proclamation throughout the whole land of the aforesaid islands, that all our subjects of those parts, who may wish henceforward to have our briefs, may enroll them there according to the ancient mode of registry of those parts, as heretofore they may have been accustomed to do in our aforesaid chancery. And you, the aforesaid Bailiffs, will cause briefs, and agreements, and contracts, to be signed with that seal, and send a transcript of the registry to us under that seal; and cause all the premises for the future to be held and faithfully observed in the form prescribed. In testimony of which we have caused our letters patent to be

issued. Witness, myself, at Westminster, the 15th day of Nov., in the seventh year of our reign."

Seamen's Benefit Society.—The following regulations enacted by the States, to supersede the duties levied for the support of Greenwich Hospital, received the Royal Assent, July 31, 1835, and were enrolled in the book of Orders in Council on the 12th Aug. following :—

AT THE STATES OF THE ISLAND OF JERSEY.

The year 1835, the 28th day of May.—On the representation of the merchants and shipowners of this island, setting forth that the duties levied for the benefit of the Royal Greenwich Hospital are abolished, and, considering that there is no fund applicable to the relief of sick, worn out, or wounded seamen, of the widows and children of seamen killed or drowned in the service of the merchant shipping of this island ; the States have authorised (with the sanction of His Most Excellent Majesty in Council,) the shipowners, and masters of vessels registered at the Custom-House in this island, and others, to form a Society, which shall bear the name of "Benefit Society for the Merchant Seamen of Jersey ;" and in order to create a fund for the said Society, the States have ordered that there shall be levied on the wages of each seaman serving on board of a vessel registered at the Custom-House in this island, the sum of 7½d, each month of service ; and the States have, at the same time adopted the following law, to serve as a fundamental rule to the said Society.

Article 1.—To date from the 1st day of July, 1835, every Captain of a vessel registered at the Custom-House in this island, shall be bound to pay, each voyage, to the person authorised for the purpose, the sum of 7½d. per month, for each seaman employed on board such vessel, for as long as it shall have been in active service, the said Captain being hereby authorized to retain the abovementioned sum of 7½d per month on the wages of each seaman employed on board of his vessel. The fractions of the month shall be reckoned.

Art. 2.—Immediately after the confirmation of the present law, a general assembly of *Armateurs*, Shipowners, and Captains, having commanded in the long run, vessels registered at the Custom-House in this Island, shall be convened, by means of the public papers, published in this Island, on Saturday, in the french language : and the said assembly shall choose from among themselves a President, Vice-President, a Committee composed of nine members, five depositaries, in whose name the funds levied for the benefit of the said Society shall be placed, and shall take such other measures as they shall deem proper to establish, and put into activity, the said

Society ; There shall not be at the assembly more than one proprietor for each vessel, which will give a vote for each vessel, whatever be its capacity.

Art. 3.—The President, Vice-President, and members of the Committee, shall remain in office for three years ; at the expiration of this term, a new election shall take place ; in choosing a new Committee, however, three of the old members at least must be reserved.

Art. 4.—The Committee shall choose, among its members, a President, a Vice-President, and a Secretary.

Art. 5.—The Committee shall appoint a Receiver, who shall not be one of the members of the Committee, and shall fix his salary. This Receiver shall be charged with levying the said sum of 7*s* 4*d*, per month, as also the contributions of the subscribers, the donations and fines which may be adjudged to the benefit of this fund, and shall place every quarter, the sums which he shall have received, into the hands of the Secretary, who shall perform the functions of Treasurer. No one can be elected or appointed Receiver or Treasurer without giving good and sufficient bail for the payment of the sums deposited with him.

Art. 6.—The Committee shall meet the first Tuesday in every month, or oftener if necessary, to deliberate on the claims which may be addressed to them. They shall examine the accounts of the Treasurer and the Receiver, every six months ; namely :—the first week in the month of February, and the first week in the month of August, each year, and shall place, in the name of the depositaries nominated by the general assembly, as often as possible, the sums in the hands of the Treasurer, into the public funds of this Island, or any other public funds, or it shall be employed in the acquisition of landed property in this Island, according as the said Committee shall judge proper.

Art. 7.—The deliberations, as well of the general assembly as of the Committee, shall be decided by the majority of members present.

Fifteen members shall constitute a quorum at a General Assembly and five members at a meeting of the Committee.

The President of the General Assembly, as well as that of the Committee, shall have right of vote at their respective meetings, as members ; and in case of the numbers being equal, shall besides have the casting vote.

The said deliberations, as well of the General Assembly as of the Committee, shall be regularly registered in two separate books, kept for the purpose, and in case the President and Vice-President should be absent, either from the General

Assembly or the Committee, the members present shall choose a President for the day.

Art. 8.—A General Assembly shall be convened every year in the course of the month of March, for examining and approving the accounts of the Society, and shall have the right to make such regulations as they may judge proper for the same, which regulations shall have force of law, provided always that they are not in opposition to the letter or spirit of the present Act; it being specially understood that the funds of the Society cannot, under any pretext whatsoever, be appropriated to any other use than that prescribed by the present regulation.

In case of the death, or resignation, through illness, of the President, the Vice-President, any one of the members of the Committee or the depositariss, the said Assembly shall replace them.

Art. 9.—In case of the death of the Receiver, the Secretary shall fill his situation until the next meeting of the Committee, when a new Receiver shall be appointed.

Art. 10.—Every person without exception quitting this island, and receiving pay on board of a decked vessel, whether to go fishing or any other trade, shall be reputed seamen of this island, to the end of the present Act, and bound, consequently to contribute, as such. Persons mounting open boats, shall be admitted to contribute, if they judge proper, by getting themselves inscribed at the Receiver's.

Art. 11.—The Captain, in paying the due mentioned in Article 1, shall in the mean time be bound to deliver to the Receiver a list of his crew, or list of persons serving or having served since the last payment, on board of his vessel, which shall state the name, christian name, age, place of birth, and capacity of each officer, seaman or other, serving or having served on board, as also the term for which he is to pay, conformably to a schedule annexed to the present Act, which document shall be attested by the oath of the said captain, if the said Receiver requires it. In default of the captain complying with this formality, he shall be liable to a fine of five pounds stg, which shall be given into the hands of the Receiver, and be applicable to the benefit of the Society. In case of the death of the captain, or of his leaving the vessel during the voyage, the officer replacing him shall be bound to observe this formality, on the same penalty.

Art. 12.—Every subscriber, contributing annually the sum of two pounds sterling, shall have a vote, besides that to which he might be entitled as *armateur* proprietor. It being

understood, however, that this privilege shall cause themselves to be inscribed, with the approbation of the committee, at the Receiver's, as members of this Society, in the six first months of its formation. After which period it will be required to contribute during three consecutive years to have a right of vote.

Art. 13.—Seamen shall have no right to any regular pension out of this fund, but as far as they shall have contributed during sixty months at least, and are incapable of navigating, whether from old age, illness, accident or wounds received in the service of the merchant shipping of this island.

The committee shall have, nevertheless, the right of granting extra or momentary relief to those who might be in extreme want.

Art. 14.—The widows and children of seamen shall have no right to a regular pension preceeding from the said fund, but inasmuch as their husbands or fathers shall have contributed thereto during sixty months, and have died in the service of the merchant shipping of this island, or from accidents which may have befallen them in the said service; and no child, having attained the age of fourteen years, shall be entitled to claim a pension from this fund, unless he be incapable of gaining his livelihood, either on account of idiocy or any other infirmity which unfits him for working.

Art. 15.—The seamen, widows or children of seamen receiving pensions or allowances from a fund of the same nature, shall not be able to claim any thing of this Society.

Art. 16.—Seamen who shall have contributed to another fund similar to the present institution longer than they have contributed in this Island, and who, having become incapable of serving, should require a pension, shall be bound to make their claim on the Society to which they shall have contributed the longest. The committee being bound to help and support their claim, and take every necessary measure for the purpose.

Art. 17.—Every seaman making a claim on the present fund on account of a wound, illness or other cause, shall be bound to produce a certificate from the captain and the mate of the vessel in which he served, stating the nature of the case for which he made his claim, which certificate must be signed by the said officers and the seaman himself, and attested by them upon oath, before a Magistrate.

Art. 18.—The widows or children of seamen making claims on the present fund, shall be equally bound to produce a certificate from the Captain and mate of the vessel in which the

deceased served at the time of his death, which certificate shall be signed and attested by the said officers upon oath, before a Magistrate, and shall state the period and the manner in which the deceased met his death.

Art. 19.—If it be impossible to produce the certificates prescribed in the two preceding articles, the claimant shall be bound to produce such other document or proof as the Committee, according to the nature of the case, shall deem fit to require.

Art. 20.—Every person forging a certificate or other document described in this regulation, or making any alteration therein either by erasure or otherwise, or causing it to be made by others, or obtaining a certificate through fraud, in order to get relief from the present fund, shall be prosecuted before the Royal Court, and punished as a swindler, according to the gravity of the case, and shall be moreover debarred for ever from every right to a claim on the funds of the present institution.


Art. 21.—The wages and salaries due by the *Armatoours* or proprietors of ships and vessels of this Island to seamen dead in the service, which shall not have been claimed by their heirs within six months after the return of the ship or vessel, or after the receipt of the news of its loss, shall be placed into the hands of the Receiver of this Society. If, within ten years after the death of a seamen, his heirs should present themselves and claim his wages and salaries deposited in the hands of the Receiver, they shall be delivered to them unimpaired; if there be no claim within this period, the said wages, or salaries, shall belong to the funds of the said Society.

Art. 22.—The depositaries named by virtue of this regulation shall not be able to sell, alienate, exchange or dispose of the funds or properties belonging to this Society, placed in their name, without being authorised by an act of the General Assembly, on pain of answering personally for the injury and damage. As to the interests, dividends or produce of the said funds or properties, they shall dispose of them according to the directions of the Committee.

Art. 23.—The penalties or fines laid down in this regulation shall be adjudged by the Royal Court at the instance of the *Partie Publique*, and the cases shall be treated briefly, as well in term as vacation.

Which shall be printed, published and posted.

FRS. GODFRAY, Greffier.

 The Schedule contains, a list of the crew, men's names, place of birth, time of entry, time of discharging or

leaving the ship, where hurt or damaged, where killed or drowned or died a natural death, wages due at time of death, what clothes or other effects any deceased man has left, amount of monthly duty, and date.

Search, right of, not allowed on shore.—The following case is reported in Bowditch's Treatise, p.68. *M'Gennis v. Cabot*. The plaintiff in this case, had put his portmanteau on board the defendant's vessel, which, on his arriving at her port of destination (Plymouth), was found missing. The industry of the plaintiff on his return to Jersey enabled him to trace the contents of the portmanteau into the hands of the defendant who had offered them for sale, and he brought his action to recover the value. The witnesses having proved the plaintiff's case, the present King's Advocate insisted that he was entitled to the amount proved in the portmanteau, £40, and £20 damages laid in the remonstrance, with costs. The defendant's counsel thought the plaintiff must be nonsuited, as the goods were *contraband by an Act Parliament registered in the Island*; so that the shipping such goods rendered the vessel and the property liable to confiscation, and the action would not lie. The King's Advocate was about to reply, but the Court thought it unnecessary, and gave the plaintiff a verdict with costs. The following affidavit of the facts was made at the time: *Island of Jersey*.—Before one of the magistrates of the Royal Court of the said Island, hereunder subscribed, personally appeared, Jeremiah M'Gennis, who, on his oath states, that in the month of October last, he agreed with the Captain of the cutter, George and Henry, of Jersey, to take charge of a quantity of India silk handkerchiefs, in pieces twenty-four, with about thirty-two pounds of tobacco; that the same were safely packed in a portmanteau, and by his permission put on board; that the said Captain, notwithstanding his agreement with deponent, permitted the same to be taken, with its contents, from the vessel, without his permission; that after much labour and search at the two principal silk warehouses, Messrs. Le Brock and Co. and De Gruchy, about the same, he found that the owner of the said vessel by name Cabot, had offered the silks in question in barter for flour with the last-mentioned house. That on presenting a written representation of the whole transaction to His Majesty's Solicitor General of the said Island, and to Mr. Hugh Godfray, Sheriff or Denunciator thereof, the same was undertaken by them to commence an action against the above-named Cabot for the recovery thereof, for the price or sum of ten pounds, with this condition, that if they did not recover the property or value

thereof, they would not seek any recompense from deponent for the costs of the said suit. And this deponent further saith, that he was assured by the father of the said Mr. Hugh Godfray, who also keeps a large silk and mercer's warehouse in the Island, that the property was safe and certain of being recovered, as no silks *could be seized on shore*.

Sworn, &c. before THOS. PIPON.

JER. M'GENNIS.

Seizure of goods and vessel liable to forfeiture.—The 6 Geo. 4, c. 114, registered in the rolls of the Court provides : "And be it further enacted, That the Master of every ship bound from any of the British Possessions abroad, or the *Islands of Guernsey, Jersey, &c.* shall, before any goods be laden therein, deliver to the Collector of His Majesty's Customs, under his hand, the destination, country, tonnage and name of such ship, the name of the owners, &c. And be it further enacted, That all vessels and boats, and all goods whatever, liable to forfeiture, under this or any other Act, relating to the revenue of Customs, *shall and may be seized, in any place, either upon land or water*, by any Officer of His Majesty's Army, Navy, Customs, &c." Upon the the faith of this act, Mr. Williams, Officer of Customs, at Southsea, came over to Jersey, to make a seizure, but his journey was rendered a fruitless one, the authorities of the Island having maintained, that their charters protected them from all search *on shore*. The following letter will explain the case :—"Southsea, 18th June, 1826.

"Sir,—When I visited Jersey, it was under the sanction of the Honourable Board. I had information of the open sale of contraband goods, and that I had an Act of Parliament making such goods liable to seizure. Under such circumstances it was natural to expect that I should be very successful, particularly as when I arrived at the Island, I had certain information as to where the goods were deposited, in six different places, to the *amount of many thousands* ; I had even gone so far as to arrange the different services, so that several persons engaged with me should act simultaneously, that the business might be effected in the different places before the alarm was given. All was well so far ; but as no house could be violated without the presence and aid of the civil power, I applied to the Governor, Sir Colin Halkett, and received every attention from him. The Chief Magistrate was sent for, and the laws referred to, by which I was *told that their Charters* protected them against such visits, in short, nothing could be done, and my voyage was a fruitless one. On particular enquiry I found that cases had occurred wherein the Revenue Officers *had actually*

seen contraband goods landed on the Island, but that nothing could be done.

"Sir, Your's, truly,

"J. WILLIAMS, Comptroller.

"To J. Bowditch, Esq., 2, Strand, London."

Segars, in packages of not less than one hundred pounds weight, may be imported into or exported from the islands of Guernsey, Jersey, Alderney or Sark, or removed from any one to any other of the said islands, or coastwise from any one part to any other part of the said islands.—6 and 7 William 4., c. 61, sec. 14.

Senechals of the Inferior Courts.—The following is a translation of their oath of office:—You swear and promise by the faith and oath that you owe to God, that well and faithfully you will execute the office of Senechal of the Court of the Fief of the Lord of ———, that you will be faithful and true to Her Majesty and her legitimate heirs and successors, that you will administer good and speedy Justice according to the Laws and Customs of the Island and the usage of the Fief, and that without exception of persons—that will bear respect to the Royal Court and shew yourself obedient to its orders and sentences, and perform generally all other duties which appertain to the said office.

Separate maintenance in France.—A question of some importance to English persons was decided by the Tribunal de Premiere Instance at Paris, in 1834: an English lady named Palmer instituted a suit for alimony against her husband, Mr. John Palmer who had refused to allow her to return to conjugal residence. The Counsel for Mr. Palmer contended, that his client being a foreigner, the Court was incompetent to entertain the question. The counsel for Mrs. Palmer, however, endeavoured to show, that as the defendant had lived in France for 18 years, and had formed an extensive establishment there, he was to be looked upon, in the eye of the French law as coming under its jurisdiction. The Tribunal however decided that as the parties were foreigners, and as no fact had been stated to invalidate their nationality, it was incompetent to entertain the question. [Gazette des Tribunaux.]

Separation quant aux biens, (separation as to property).—This is a contract, according to the customs of Normandy, for dividing the property of husband and wife, and may at all times be entered into in the islands of Jersey and Guernsey. It is also practised in Lower Canada, and some of the other Colonies, originally settled by the French. It is obtained in Jersey, by motion before the Inferior Court, and costs about 8s. or 10s. The parties are not required to give any notice of

their intention, to enable creditors to lodge an opposition, or to show cause against it, but present themselves in Court, generally at the close of the sitting, under the side gallery, to which they get access by the ante-room, where they may not be seen ! The application is usually made when the Magistrates are unrobing themselves, and the audience is retiring, so that through the noise which then takes place, their names may not transpire ! The Bailiff merely interrogates them as to whether they desire to be separated of their own free motion and consent, which being answered in the affirmative, the demand is granted as a matter of course ; a minute is made of the circumstance, and subsequently an Act is drawn up in due form, and entered on the records. By this process, the husband and wife are remitted to their original position as regards *property*, and become individually possessed of their separate rights, and liable for their civil contracts, one to the other, and also to third parties. In fact, they become strangers in law, by which bargain and sale between them is valid, even to the prejudice of creditors. Under the protection of this precious relic of olden times, every species of fraud and swindling is practised, to the great detriment of the commerce and reputation of the Island. The act of *separation quant aux biens* is in short a *passport*, by which the husband is enabled to *pass* his property to his wife, and consequently to *pass* the creditor's remedy from his property to his person, and thus virtually to get released from his debts ! In these transfers, so fraudulently made by the husband, and collusively accepted by the wife, the former *sells* and the latter *buys* the property, which the husband might be able to acquire ; and his creditors are either swindled out of the whole of their claims, or are compelled to accept such terms as he may offer, or rather his wife, by way of compromise, on his behalf. It is in vain to remonstrate on the perfidy of the transaction, the husband keeps aloof, and leaves his wife to face his creditors, who generally answers them in the following terms : " I have bought nothing of you, if my husband owes you any thing, put him in prison if you like : he possesses no property, and the whole of the stock and furniture is *mine*." It is needless to observe, that any terms are accepted under such circumstances. This manoeuvre is not only adopted to serve immediate purposes, but often times by way of anticipation, to be made a handle of on a future occasion. The parties being separate only as to *property*, they continue to live under the same roof, which causes a double deception, and contributes in a great degree, to keep the public in total ignorance of the matter.

And this will account for the circumstance, that the husband is still enabled to keep in credit, and *apparently* to carry on business as heretofore, and thus to get largely into debt ! When a rich harvest has been secured, and an arrest is about to be levied, or perhaps to be confirmed before the Court, an objection is raised, that the goods were the property of the *wife*, the house having been taken by her, and the business carried on in her name. This is proved perhaps by the production of the lease of the premises, and a few invoices, showing that certain goods have been purchased by her from strangers, as well as the main stock from her husband. The arrest is then liberated, the debtor side of the account being the husband's, and the creditor side the wife's. It must be observed, that there is no law which can set aside a fraudulent transfer of moveables, if it be made ten clear days before a *desastre* is declared, nor is there any that makes property in the use and occupation of a party, and under his disposition and controul, subject to his debts, though not the true owner thereof, as the bankrupt laws of England do, consequently the business apparently carried on by the husband, is a means of decoy, and enables him to acquire credit, especially from strangers. This *separation quant aux biens* extends to all classes of society : even to some of the public functionaries and other persons ; but then they obtain it in *private*, before the Bailiff and two Jurats, by paying extra fees. After a separation, the husband is still liable to arrest personally for his own debts, but is not liable for his wife's, nor is the wife's property for her husband's, but both she and her property are liable for her own contracts. We could quote numerous instances of the working of this infamous system, but as our end is accomplished without being personal, we deem it sufficient to explode its abuses without mentioning names. In order to prevent this systematic swindling, it has been recommended that creditors should always insist that the *wife* as well as the husband, should be a party to the contract, accept bills of exchange, or endorse them, so as to render her equally responsible for the claim with her husband, but even that would be no remedy in cases of bankruptcy ; in short nothing would preserve the rights of a creditor, but a joint obligation entered up as a judgment, and registered against their properties, supposing them to be sufficiently disencumbered to offer a *security* for the same.

Serjeants of Justice. (Denunciators.) A Bill was brought into the States on the 18th Oct. 1834, setting forth, that two of the said officers living in the Country, it was found impossible to get process served by *night* ; showing the inconveniences

resulting therefrom, and providing that a third officer should be appointed by the Bailiff, by and with the approbation of the Crown. The project however was soon knocked in head by a manoeuvre. Mr. Lamb, *brother in law* of one of said officers having been served with process by night, showed cause against its legality, and obtained a Judgment of the Court, Dec. 6, 1834, declaring, that service after sunset was illegal—notwithstanding it had been practised many years before; in consequence of *this*, the Bill for the appointment of a third denunciateur was abandoned.

Serjeants to the Queen.—These are inferior officers who act in the absence of the Prevots, and have similar duties to perform. The following is a translation of their oath of office:—“ You swear and promise, by the faith and oath that you owe to God, that well and faithfully you will exercise the office of Queen's Serjeant in the parish of ———, that you will make all good and lawful summonses and records; that you will see that the right of Her Majesty be respected and maintained in all things, and shall make the ordinary and requisite declarations, and generally perform all other duties which appertain to the said office.”

Settlement.—No settlement can be acquired in Jersey by marriage, by hiring and service, by residence, by estate, by paying rates, or by fulfilling a public office: nor can it be acquired by birth until the party attains his majority; and it is questionable, if it can be by apprenticeship, even if the party shall have served *seven* years. All *children* take the parish of the father, and if that be unknown, then the parish of the mother, until they become 20 years of age, when they take the parish of their birth. A Jersey woman marrying an Englishman loses her maiden settlement, and takes to the parish of her husband, and can acquire no other during coverture. In 1832, when the Island was visited by Cholera, the Constable of St. Helier, F. Godfray, Esq., Advocate, caused an inquisition to be made into the pecuniary circumstances of all persons non-natives, who were residing in the town of St. Helier; and exacted from an immense number of them, security in sums, varying from £5 to £10, according to their number in family, by persons of landed property within the Island, that they would never become chargeable to the public, although it was impossible they could acquire a settlement; and in default thereof, they were forcibly banished from the Island! About 500 persons were expelled in this illegal manner, without having become chargeable at all, without having been presented before the Court, and without any colour of law to justify the proceeding!

Many others were banished also, who had *temporarily* become chargeable by yielding to the exigencies of the public. —This extraordinary stretch of power, and monstrous crusade against the liberty of the subject, having excited the indignation of the British residents, the following Petition numerously signed, was transmitted to his late Majesty in Council, praying that a stop should be put to the measure as being both despotic and illegal, and that an alteration should be made in the law of Settlement :—To the King's Most Excellent Majesty in Council. The humble Petition of the British Residents and other inhabitants of the Island of Jersey, whose names are hereunto subscribed, Sheweth,—That {your petitioners take leave to approach your Majesty with feelings of ardent attachment to your Royal Person and Government. That they consider the Liberty of the Subject as their indelible right, and that they shall always be protected by your Majesty in the full enjoyment of it, in every Possession of the Crown. That they are filled with indignation at the measures now enforced by the Parochial authorities of the Town of St. Heliers, in this Island, by which those of your Majesty's dutiful Subjects who were not born here, are called upon to give security in landed property, in sums varying from five to ten pounds according to their number in family, that they never shall become chargeable to the Parish, or be immediately banished from the Island. That the British residents comprise many thousands by whom this measure is found to be both oppressive and illegal. That the law of the Island authorizes the removal of strangers, as paupers, only when they have actually become chargeable, and have been presented by the Constable of the parish before the Royal Court, and who shall have heard their cases, and determined on them accordingly. That even this Law operates with great injustice towards the British Residents, because it makes no exception in favour of those, who have been assessed to the public rates, for any number of years, towards the maintenance of the Jersey Poor. That the banishment of your Majesty's subjects when not chargeable, and without being presented before the Royal Court, is both illegal and despotic ; that it places them in a worse condition than felons, who are transported from hence to any place they may choose in England and there set at liberty ; because it drags them from the quiet enjoyment of domestic happiness, and drives them to pauperism and misery. Your petitioners therefore humbly crave, that your Majesty will be pleased forthwith to issue your royal commands to put a stop to these acts of oppression and outrage against public

liberty, and that your Majesty will be further pleased to cause such alterations to be made in the law of settlement, as will give to the British residents who contribute to the public rates of the Island, such rights as are founded in equity, and shall be in some measure reciprocal with the privilege which your Majesty's Jersey born subjects enjoy of acquiring a settlement in England.—And your petitioners as in duty bound, &c.

St. Helier, Island of Jersey, Sept. 1832.

The above Petition was transmitted to the Secretary of State for the Home department, who immediately caused the measure complained of to be stopped. The Petition was afterwards transmitted to the Lord President of the Privy Council for consideration, but no *legislative* action upon it has yet taken place. In consequence of this, British Residents assessed to the support of the Jersey Poor, are still excluded from the right of acquiring a settlement in the Island.

Sequestration of property.—Whilst the public are beset on all sides with vexations of every description and kind, there is still another crying abuse among many others which requires examination. It is that immense sums to the amount of several thousands of pounds sterling have been for a long time in the hands of the Deputy Viscount and two Denunciators which are the produce of public sales made before those officers, by order of the Court for the benefit of creditors. Also the high commission of 5 per cent which is levied by them on all goods or effects which they sell, besides their expences of arrest and confirmation of the same, which diminishes much the dividends to the pound sterling. [Les Griefs du Peuple Jersias, p. 14.]

Sexton.—Every parochial Vestry chooses its own Sexton or Grave digger, whose office is generally for life, if he behaves well. He is not sworn in, but his office is recognised by an Act of the States of the 30th of March 1804, since confirmed by an Order in Council of the 31st of July 1804.

Sham Marriage.—The following is taken from the News, April, 1833. A Mr. De Garis, head Clerk of the establishment of Mr. Brehaut, Mr. Harris, and two others of the name of Barnes, a few days since imposed on the credulity of a girl, who lived at the Arcade-Inn, Market-place, Guernsey, when in an upper room of that house, the ceremony of a mock marriage between the girl and one of the parties was performed; our readers may suppose what followed. The result was, that the parties were apprehended and brought before the Court on Wednesday, when the following judgment was delivered; but why De Garis, who we suppose is a Guernseyman, and equally a sculpable as the others, was not required to give bail also for

his future good conduct, we are at a loss to divine :—" Thomas Harris, William Barnes, Robert Barnes, and John De Garis, have this day been brought before the Court, by William Solbé Sheppard, esq., one of the Constables of St. Peter-Port, charged with having taken advantage and abused the credulity of a young woman, named Elizabeth Marquard, of having made her believe that she was married to the said Harris,—and of having afterwards, under false pretences, endeavoured to rob her of her chastity. The Court after hearing witnesses, has sentenced the said Harris, William Barnes and De Garis, to one month's solitary confinement; and it is ordered that the said Harris, and the two Barnes's shall at the expiration of their respective terms of imprisonment give bail of £50 each, for their good conduct or quit the Island, and they are forbidden to return hither previous to their having given the said bail, under pain of exemplary punishment at the discretion of the Court."

Sheep and other Cattle.—All persons are prohibited from pinning or tying sheep or other cattle along the public roads, or in the grounds or fields bordering on the public roads, or in the streets of the town, on pain of six livres penalty for every sheep, and twelve livres for every head of cattle, and fifty livres for stallions and bulls. [Act of the States, confirmed by Council, July 4, 1816.]

Slander, libel, and all minor causes of assault or battery are not prosecuted by indictment, but by a civil action for compensation in damages. Sometimes the Attorney General is adjoined to the plaintiff, in which case, if defendant is found guilty, he is adjudged to pay damages and a fine to the Crown also; which however small always carries costs. In Guernsey, the above are taken notice of criminally. In the case of Mr. Jos. Gullick, jun., who had written a letter published in the *Star*, in answer to a Mr. Martin's, in which he endeavoured to impugn his evidence given at the trial of some young men for breaking the iron railing in Doyle Road, he was presented before the Court, in the custody of the Constables, when the King's Procureur maintained that "the case was not of a private, but of a public nature, and consequently that it was properly cognizable as an affair of police!" The Editor of the *News*, whaggishly observed: "Does the Procureur know, that the Lord Chancellor's commission *De Lunatic Inquirendo*, extends to Guernsey?"

Smuggling.—Vessels not being square-rigged, or any boat, belonging in the whole or in part to British subjects, or having half the persons on board, British subjects, found within

100 leagues of the United Kingdom, or any foreign vessel not square-rigged, or boat, having one or more British subjects on board, discovered within 4 leagues of that part between the North Foreland and Beachyhead, or within 8 leagues of any other part, or if any foreign vessel or boat be discovered to have been within one league of the coast of the United Kingdom, or if any vessel or boat be discovered to have been within one league of Guernsey, Jersey, Alderney, Sark or Man, any such vessel or boat having on board, or in any manner attached thereto, or conveying or having conveyed in any manner, spirits not being in casks, or package, containing 40 gallons at the least, or any tea exceeding 6 lbs. weight in the whole, or any tobacco or snuff not being in a cask or containing 450 lbs. at least, or any cordage or other articles adapted for slinging or sinking casks of less size than 40 gallons, then in every such case, the said spirits, tea, tobacco or snuff, and the cordage, or other articles, and casks, and also the vessel or boat shall be forfeited. 3 and 4, W. c. 53, s. 2. The 3 and 4 Wm. 4, c. 52, s. 75, provides, that all penalties and forfeitures incurred and imposed by this or any other Act, relating to the Customs, or to trade and navigation, may be sued for, prosecuted, and recovered, by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record, at Westminster, Dublin, and Edinburgh, or in the Royal Courts of Jersey, Guernsey, Alderney, Sark or Man. Sec. 90, provides, that no writ of Certiorari shall issue from his Majesty's Court of King's Bench, to remove any proceedings before any Justice or Justices of the Peace, under any Act for the Prevention of Smuggling or relating to the Customs, nor shall any Writ of Habeas Corpus issue to bring up the body of any person who shall have been convicted before any Justice or Justices of the Peace, under any such Act, unless the party against whom such proceeding shall have been directed, or who shall have been so convicted, or his Attorney or Agent, shall state in an affidavit in writing, to be duly sworn, the grounds of objection to such proceedings or conviction, and that upon the return to such Writ of Certiorari or Habeas Corpus, no objection shall be taken or considered, other than such as shall have been stated in such affidavit; and that it shall be lawful for any Justice or Justices of the Peace, and they are hereby required to amend any information, conviction, or warrant of commitment, for any offence under any such Act at any time, whether before or after conviction. Sec. 120, that all suits, indictments, or informations, shall be brought, sued, or exhibited, within three years after the offence has been com-

mitted, and shall be exhibited before one or more Justices of the Peace, within six months after the date of the offence.

Smuggled Goods, contract for payment of.—Upon a contract for smuggled goods, though they are received, the money cannot be recovered. [Thomson v. Thomson, 7 Ves. Jun. 493. Assumpsit will lie for goods sold abroad, which are prohibited here, if the delivery of them be complete abroad, though the vendor knows they are to be smuggled into England. [Holman v. Johnson, Coup. 341.] But it will not lie for smuggled goods sold abroad, if the vendor is to deliver them in England, or if they are only to be paid for in case the vendee succeeds in landing them. [Clarke v. Shee, Coup. 334; 2 Dougl. 698 n.] Nor can the vendor of goods abroad who has packed them in a particular manner by the order of the buyer, for the purpose of smuggling them into this country, and knew at the time that they were to be smuggled, recover the value against the buyer although he was not concerned in the risk of the importation. [Waymell v. Reed, 5 T. R. 599; S. P. Barnard v. Reed 1 Esp. 91 and see Biggs v. Laurence, 3 T. R. 454.] An inhabitant of Guernsey cannot recover in the courts of this country, the price of goods sold by him there, if he knew it to be the buyer's intention to smuggle the goods into England, and gave him assistance for that purpose. [Clugas v. Penaluna.] English smugglers to avoid punishment should take refuge in Jersey. See *Criminals, escape of*.

Solicitors, the Viscount, Denunciators and Greffier not allowed to practice as.—Formerly the Deputy Viscount and Denunciators applied themselves wholly to the duties of their office, but of later years these gentlemen have taken upon themselves, notwithstanding their official situations, to practice as Attornies or Solicitors of the Royal Court; numerous cases occur in which the duties they are bound officially to execute are wholly incompatible with the duty that, as Solicitors or Attornies, they owe to the interests of the suitors by whom they are professionally employed. One or two instances will be sufficient to shew that this is the case:—The Royal Court frequently directs the Deputy Viscount, or, in his absence, one of the Denunciators, to examine into and make a report upon the matters in difference between the parties in a cause. Where it happens, as is very commonly the case, that the officer to whom this reference is made is acting as Attorney for one of the parties in the cause, it is evident that he must have a bias in favour of his own client, which must be greatly against his coming to an impartial decision. Again, when from illness or other cause, the witnesses in a suit are unable to attend to give evidence personally in Court, the Viscount or

one of the Denunciators is directed to take his depositions in writing : here, too, when the officer entrusted to take the depositions, is acting at the same time as Attorney to one of the parties, the inclination which he must naturally feel to further the interests of his own client is clearly at variance with the impartial discharge of his duty in his official character. It is also the duty of the Deputy Viscount and Denunciators to summon all witnesses : and when a writ of execution issues, those officers are entrusted to put it in force. A slight consideration only is necessary to shew the impropriety of these duties being entrusted to persons who are acting as Attornies to the parties. [Sir John De Veulle, Knt., Bailiff, see his Statement in the case *Le Gallais and others v. De Veulle* and another, before the Privy Council.] None of the Jurats, nor the Viscount, nor the Denunciators, nor the Greffier of the Court, shall hereafter be allowed to be Agents, Solicitors, or Attornies of any one whomsoever, except in their own causes, but shall behave themselves indifferently according to the duties of their offices, without soliciting or giving advice, or testifying in Court. [Ordinance of Queen Elizabeth, 16th July, 1562, omitted to be registered on the rolls, in order that it might not have force.] See *Records, omission in.*

Spirits.—By C. O. March 11, 1834, spirits from Jersey and Guernsey, may be imported into the United Kingdom, in vessels of the burthen of 70 tons and upwards ; whether square-rigged or not. See *Brandy, Geneva, and other Spirits.*

Stamped documents given in evidence in England.—If a certain stamp be required by the law of the colony, where the contract was made, though not required in England, the contract, unless it has been stamped according to the law of the colony, cannot be enforced in England. And if by the colonial law a chose in action is in any case assignable, the assignee may in that case support an action in the English courts, though choses in action are not assignable here.—[Clarke's Colonial Law.]

States, non-attendance of Members.—Whereas there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council, for the affairs of Jersey and Guernsey, dated the 24th April last, in the words following, viz. :—"Your Majesty having been pleased by your Order in Council of the 7th of April, 1830, to refer unto this Committee, a letter from the Right Honourable Robert Peel, one of His Majesty's principal Secretaries of State, to the Lord President of the Council, with inclosures from the Lieutenant Governor of Jersey, representing the inconvenience that had occurred in consequence of the interruption to public business,

occasioned by the non-attendance of several members of the States of that island, when legally summoned ; the Lords of the Committee, in obedience to Your Majesty's said order of reference, this day took into consideration the said letter and papers relating thereto, and referring to an article in the Code of Laws, agreed upon by the States of the island of Jersey, and confirmed by an Order of His Majesty in Council of the 28th day of March 1771, to the effect following, viz. :—' The Constables as well as other members of the States, shall be bound to attend the Assembly at the precise hour appointed, unless prevented by indisposition or other lawful excuse, which shall not be received, unless they send a person to make excuse for them upon oath, under penalty of one hundred sous, which is to be levied by the Viscount, and applied according as the States may direct. They shall be liable to attend in person at the Assembly of the States, unless they shew legitimate cause for absenting themselves, under the above penalty, and Centeniers will not be received to attend in their stead, except in cases of indisposition, absence from the island, or similar impediments ;' and also referring to an Order of His Majesty in Council of the 2nd June 1785, wherein it is declared, ' That the refusal of the Lieutenant Bailly to put to the vote any questions moved and seconded in the Assembly of the States, or the withdrawing of the Jurats from the said Assembly, for the purpose of stopping or preventing the States from proceeding in their business before them is illegal, and whereby it was ordered, that whenever it should appear that a majority of either of the three orders, the Jurats, Clergy and Constables, had wilfully and contumaciously absented themselves, it should be lawful for the remaining part of the body who were then present to fine the absent members, and to direct the same to be levied upon their goods and chattels.' Their Lordships humbly beg leave to report as their opinion to your Majesty, that whenever any member of the States shall, after having been duly summoned, absent himself from any meeting of the said States, without such lawful excuse as before stated, he shall incur a fine of Two Pounds sterling, which shall be forthwith levied by the Viscount or his Deputy, for the benefit of His Majesty, his heirs or successors. His Majesty having taken the said Report into consideration was pleased, by and with the advice of his Privy Council, to approve thereof, and to order as it hereby ordered, that the same be duly and punctually complied with. Whereof the Governor, or Lieutenant Governor, Bailli, and Jurats of the Royal Court of the Island of Jersey are to take notice and govern themselves accordingly.

JAMES BULLER."

This order was *refused* insertion among the records, and was thereby nullified, according to the usual practice in Jersey.

Sterling and Currency.—The former is British, and the latter old Jersey, money. Their difference in value depends upon the rate of exchange. Now the exchange in Jersey on Paris is governed by the value of our currency compared with that of England; and will in most cases vary according to our premium on London. The present rate of Exchange in Paris or London, is 25f. 25f.; which when compared with the pound old currency or 24 livres of this Island, makes the premium on English money, in France at about 5 1-5 per cent. The difference between our premium on London of 8½ per cent., and the 5 1-5 per cent. premium in Paris, becomes the exchange in this Island or Paris, which is about 3 per cent; these two added together make our premium on London. [News, April, 18, 1834.]

Stolen goods, receiving of.—In the *Crown v. Le Brun and wife*, (1834) indicted for having received stolen goods knowing them to have been stolen, it was proved in evidence that the goods were received by the wife, who kept a pawn shop and transacted the business, by her husband's knowledge, and under his roof and protection, and therefore must be presumed to have acted through his coercion either express or implied; the Jury without a shadow of evidence rebutting that presumption instead of convicting the husband and acquitting the wife, actually *convicted the wife and acquitted the husband*!

Stone, vessels laden with.—No vessel arriving on the coast of England, from Guernsey, Jersey, Alderney, Sark, or Man, wholly laden with stone the production thereof, shall be liable to be conducted or piloted by Pilots appointed and licensed by the corporation of the Trinity House of Deptford Streud, any law, custom, or usage to the contrary notwithstanding. 3 and 4 Wm. 4, c. 52, s. 43.

Stoppage in transitu.—In *Slater and another v. Le Feuvre*, before the Court of Common Pleas, in 1835, Plaintiffs had forwarded goods to a M. De Coutier, of Guernsey, to the care of Defendant, Shipping Agent at Southampton. Finding afterwards that De Coutier was insolvent, they sent down to Southampton to stop the goods in transitu, which was done by defendant under their orders, but he subsequently refused to return them to plaintiffs, insisting that he had a right to retain them as a set off against an Agency account that was due to him by Mr. De Coutier. Counsel for defendant argued, that Southampton was the destination of the goods, and consequently he could apply them to the liquidation of his claim.

Chief Justice Tindal submitted to the Jury two points ; firstly, whether the destination of the goods was Southampton, and secondly, whether the stoppage in transitu was made by defendant under the orders of the plaintiffs. The Jury found a verdict for plaintiffs.

Strangers.—The following is taken from the *Code* of 1771, the whole of it is still the Law, though not strictly acted up to. It is a question, whether it was ever meant to affect *British* subjects, thought attempts have been made, to bring them under its operation. Conformably to a certain Order of the King and of his Council, dated the 12th day, of June, 1635, entered on the Rolls of the Royal Court the 24th day of Sept. following, and a certain letter of the Lords of his Majesty's Council, dated the 20th day of February, 1660, entered the 27th day of April, 1665: It is ordered, to every inhabitant of this Isle, be he a tavern keeper or other person, not to receive any Stranger into his house, nor permit any one to remain more than one night, without informing the Constable of the Parish, on pain of ten livres penalty, one third to the King, one third to the poor, and one third to the informer. The Constable of the Parish of St. Helier shall be subject to make a report to the Governor, within 24 hours, of the knowledge, which shall have been given to him of the arrival of strangers, or as soon as it shall be possible for him ; and the Constables of the other parishes within eight days at the latest, or as soon as possible, if such Strangers shall be suspected. Strangers shall not be suffered to abide in this Island, nor to marry women of this country, without the permission of the Governor, according as it is directed by the said Order of his Majesty and of his Council, June 12th, 1635 ; and if they contravene they shall be compelled to quit the Island. Those who shall make abjuration of the Roman Catholic religion, shall no longer be suffered to establish themselves in this Island without the permission of the Governor, and of the Civil Magistrate, and, on obtaining it shall be obliged, if required, to give bail for their good behaviour and that they shall not become a burthen. All Strangers, known as Protestants, and of a good morals, who shall come to establish themselves in this Island, shall meet with encouragement, but shall give bail if it is judged necessary. It shall not be allowed to Strangers to wander from house to house, out of the great roads, which lead directly from the harbours of the towns of St. Helier and St. Aubin, nor to approach the Fortress or Fortifications ; and if they shall contravene, they shall be seized and presented in Justice by the officers or other persons and shall be subject to such fine as shall appertain. It is for-

bidden to all Strangers and non inhabitants to sell by retail in this Island, any merchandize or wares of what nature or quality soever, directly or indirectly, in public or in private ; but they shall be able to sell in wholesale those pieces of merchandize entire and not cut, for such time as shall be allowed them. Strangers and non-inhabitants who shall bring merchandizes or wares for sale, having obtained permission of the Governor to sojourn in the country, shall be bound to obtain a permit from the Chief Magistrate, under his hand, to give notice to the public of the merchandizes they propose to sell ; by which permit the time that shall be granted them shall be limited, beyond which they shall be punishable if they continue to keep them on sale, as offenders of the Laws, by confiscation of such merchandizes or wares, and, in addition, by penalties. Inhabitants of this Island, who shall sell in retail, shall not purchase of merchant-Strangers directly nor indirectly, but after that their merchandizes shall have been exposed three days on sale to the public ; publication having been made according as is prescribed above, on pain of confiscation of the merchandize, and of sixty livres penalty. Corn Salt and Provisions, which it shall be permitted to Strangers to bring into these Island, shall be exposed for three successive days, after that the permission shall be obtained of the Chief Magistrate, and notice given to the public ; nor shall it be permitted to sell them by wholesale during the said days, nor to the inhabitants to buy in that manner directly or indirectly, on pain of confiscation, and sixty livres penalty, both against the seller and buyer. Strangers shall not expose their merchandizes or wares in public sale, but to the highest offer and last bidders directly or indirectly, on pain of confiscation of the said merchandizes and wares." See *Foreigners*.

Strangers in Guernsey, placed under the surveillance of the Police.—A very obnoxious law containing the following four clauses was passed by the Royal Court of Guernsey on the 16th Aug. 1834, by which all *Englishmen* without exception are placed under the surveillance of the Police ! 1. Every person occupying a house, or part of a house shall be held bound within eight days from the 1st of September and the 1st of March in each year, to furnish the Constables of the parish in which such persons reside, with a correct list of *all persons not natives* of this island, who inhabit the said house, or part of a house, under pain of a fine, at the discretion of the Court, which shall not exceed 50 livres tournois. 2. Every change taking place in the list after it has been made and delivered, must be repeated under the same penalty to the said Constables,

within thrice twenty-four hours after the change shall have taken place,—that is to say, if a person not a native quits the house, or if another not a native takes his abode there, the occupier must make his report as above. 3. The Constables of each parish shall keep a book in which they shall make an entry of every house, in which a person not a native may be residing, in which book all the changes taking place and reported to the said constables, shall likewise be inserted, together with the dates of the said reports. 4. All masters of vessels, barks or boats arriving at this island, shall on their arrival, at latest within 24 hours afterwards, deliver to the Constables of the Town, or leave at their office, a correct list of the passengers they have landed, and this under the penalty aforesaid.

Strayed Cattle.—There are no pounds in Jersey, hence the remedy is by action at law for trespass. In the case of *Aubin v. Becquet*, (1830) it appeared that 16 sheep belonging to defendant had strayed to the ground of plaintiff, who caused them to be cried, and the fact notified after Church on Sunday following, but the notice was *not affixed to the church door*, as it seemed the law required. By some accident 4 or 5 of the sheep were stolen or lost, before defendant applied in consequence of the notice, so that only 11 could be delivered which he refused to take, alleging that plaintiff must find the full number. The Court found a verdict for the plaintiff, deducting only a few shillings for the keep of the sheep, till the defendant was informed where they were.

Successions. See *Wills*.

Summonses for a person to attend as a Juryman, or to give evidence at a Coroner's Inquest, require no previous notice whatever. Those for the Magistrates to attend Court, and of the members of the States to attend a sitting of the Legislature are usually delivered two clear days, but on urgent occasions, this rule is dispensed with. Summonses to appear at Court are delivered by the Prevots, whose fees are 3d. for each summons; those of the States are delivered by the Denunciators, who are paid about £100 British Sterling per annum, out of the public revenue, for that duty: their charges on ordinary occasions are, for summoning the States, 15s. Committees, 15s, delivering printed copies of the Acts of the States, or Reports, if only to the Constables, 20s. but if to the whole body, 30s.; on extraordinary occasions their charges are increased.

Superfluous formalities, abolition of.—The following Act of the States has received the Royal Assent.—

AT THE STATES OF THE ISLAND OF JERSEY.

The Year One Thousand Eight Hundred and Thirty-three the thirtieth day of January. The States deeming it indispensable to the proper administration of Justice, to reduce the costs of suit, by doing away with all superfluous formalities, to abridge law suits, by abolishing all useless delays, have resolved, with the sanction of His Majesty in Council, to enforce the following regulation, viz :—

Article 1st.—The presence of the litigants shall not be required in Court. The Advocates appointed to plead for them shall represent them fully.

Art. 2nd.—The plaintiff shall be required to serve a writ or summons to the adverse party at least four days previous to that upon which he is called upon to appear.

Art. 3rd.—The first summons to the Courts of Héritage and Cattel shall be served at least fifteen days previous to the sittings of those Courts ; but the cases sent before those Courts shall be assurable : and may be treated from one fortnight to another within term, like the causes before the Saturday's Court.

Art. 4th.—In order to obviate the necessity of calling a great number of witnesses, the Court on referring a cause to evidence shall specify in the act the facts which are admitted, and those of which proof is required.

Art. 5th.—At the Courts of Héritage, Cattel, Samedi, and Billet, there shall be two *tables*, or lists or causes made by the Greffier ; the first for cases requiring evidence, the other for other causes indiscriminately.

Art. 6th.—A cause shall not be put off owing to the indisposition of one of the parties, unless the adverse party, or the Court, do grant him the decisory oath : always excepting a case of sudden illness proved by the oath of a medical man.

Art. 7.—A witness shall not be exonerated from attending on the plea of indisposition, unless the person sent to essoine him shall declare upon oath, that he conscientiously believes the witness to be so indisposed as to render his attendance at Court prejudicial to his health. When a witness is essoined from sickness, or when a witness is declared to have been absent from any cause considered sufficient by the Court, the cause shall then be deferred by the Court for a limited period, according as the case may require, and that at the cost of the party requiring such delay.

Art. 8th.—A witness who shall not appear after being duly summoned, shall be condemned, unless essoined from indisposition, or absent from the Island prior to the summons, or from

some cause considered sufficient by the Court to a fine of three *livres d'ordre* to the King, to all charges incurred in consequence of his absence, and to the cost of his seizure. The Court shall order him to be seized forthwith by the Viscount, or by one of the Sheriffs, and brought up the day upon which the cause is heard.

Art. 9th.—All witnesses in civil and mixed cases shall receive from the party at whose suit they are summoned thirty two *sous d'ordre* for every appearance at Court, payment to take place the day on which the cause is called.

Art. 10th.—The summons heretofore served to a witness by the Prevot is abolished. A witness shall not be bound to appear if he have not been subpoenaed by the Viscount, or by one of the Sheriffs, at least one day prior to that upon which his appearance is demanded.

Art. 11th.—Days shall be specially appointed for causes *en ajonction* where witnesses are called, they shall only be heard on those days.

Art. 12th.—The provisions of the preceding articles shall equally apply to causes instituted by the Crown where witnesses are called.

Art. 13th.—The Court shall in future hold its sittings on the following holidays :—St. George, St. Philip, St. James, St. Peter, St. Michael, St. Simon, St. Jude, St. Luke and St. Andrew.

Art. 14th.—The judgment of the inferior number shall be final in personal causes, where the object in dispute shall not exceed the value of £5. The decision of the full Court shall be final in all personal causes under the value of £80.

Art. 15th.—The Court shall be required to mention in their acts the motives of all the decisions which it may render.

Surcharge to the Public Rates.—Whenever a person is sued before the Court for payment of his rate, if his plea is that he is overrated, the Court uniformly discharges him from the action, after having heard him declare upon oath, that the whole of his property, real and personal, is not worth double the amount of the rate at which he is assessed.

Suspension and alteration of Judgments after trial, and concoction of Judgments before trial.—It is very common for a judgment to be suspended, by a Jurat asking time to consider his judgment, because a recent law requires them to assign motives for the same, which they are seldom competent to perform offhand at the time of trial; and cases are known in which they have procured the assistance of the Advocate who had pleaded the cause on the side they purposed to judge, to

frame the judgment for them : nay more, we have been assured by a respectable merchant, who had a cause tried before the full Court, and which was given against him, that a certain jurat subsequently acknowledged to him, that he gave judgment against him *at the instigation of the party's own Advocate at the time of trial* ; who left his seat whilst the magistrates were deliberating and on approaching the bench whispered to the Jurat *bien jugé, mal appelé*, on which judgment was given accordingly. There are strong grounds for believing the allegation to be true, as the movement of the Advocate was particularly observed at the time, though the Jurat has since pretended, that he has no recollection of what he said to the merchant, at the time alluded to. Several cases are known in which the judgments of the Court have been *altered*, [See *Revocal of Judgments*,] to which we shall add the following one, brought to light by Advocate Godfray, Constable of St. Martin, at the sitting of the States, July 5, 1837. ‘ The Constable of St. Martin remarked, that a short time since a report was entered before the Court by the Deputy Viscount concerning the destitute state of the prisoners, when it was ordered by the Jurats on the bench, (Messrs. De Carteret and Marett) that her Majesty’s Receivers should be convened, but he (the Constable) had since been informed that the *judgment of the Court had been altered*, and the report ordered to be presented before a full Court, however, he had heard nothing of it since. [Signs of astonishment.] After many invidious remarks, in which some of the members seemed to insinuate that the Greffier had altered the act, The Greffier rose to explain the matter. He said that *the Attorney General went with the Deputy Viscount to the Jurats after Court, and represented the affair to them, when they ordered the judgment to be altered*, and allowed the matter to be referred to a full Court. The Constable of St. Martin could not restrain his astonishment at such a proceeding : how dared they to alter an Act of the Court which had been passed under the presidency of Sir John De Veulle ? It was really an outrageous proceeding.” [News, July 7, 1837.] *Concoction of Judgments before trial*.—In the case of Advocate Godfray, who in 1832, was suspended from practising at the bar, for calumniating the Bailiff in open Court, the latter met several Jurats at a certain house to concoct a judgment against him ; and in the case of Major General Thornton, Lieut.-Governor, *v. Le Breton*, Colonel of Militia, who was suspended for insubordination towards his Excellency ; the case having been brought before the Court, the Jurat De Carteret, to give vent to a private pique which he

had against the Lieut.-Governor, produced a judgment in writing against him, *prepared before trial*, which was adopted by the Bench. The case is stated in the News, Aug. 22, 1834, "It is reported and very generally believed, that the judgment recently given by the Royal Court in the cause between General Thornton and Colonel Le Breton was actually concocted before the trial took place. It has been a matter of astonishment to many persons, how the Jurats could have managed to frame so long an act, in so short a time : they were absent for the purpose of considering their judgment, only twenty minutes, by a gentleman's watch, and in ordinary cases, the mere framing of such an act, independent of the time for bringing their opinions to anything like uniformity, would take nearly an hour ; but now the secret is out ! It will be seen by the following paragraph, which is translated from *Le Constitutionnel*, that this serious charge against the Royal Court is broadly stated, therefore unless that tribunal shall instantly vindicate its honour, justice and dignity, it will henceforth be stamped with everlasting disgrace in the eyes of the people. ' We know that this judgment was prepared in secret, that its origin is encompassed in dense obscurity, and that the author continues unknown : we know that it was produced by an angry magistrate who sought to be revenged for a glaring affront he received about a year since, and we hesitate not to say that it is not the work of the Court, nor of the Magistrate who produced it. No, Mr. De Carteret has not the capacity to write it ; *it was seen, read and corrected by a great number of persons before the hearing* ; it was edited by an individual out of office ; the Court in thus receiving it, is degraded to the lowest level ; all the Magistrates are not equally culpable, for all did not know the origin of this act, which must hand down to the latest period incontestible evidence of the civic spirit, of the patriotism and the sagacity of our unpaid Magistrates.' Whilst this stands recorded in the annals of the country as a fact, and one which courts enquiry, but is not confronted, we do not envy the feelings of Col. Le Breton at his triumphant victory, nor of those who have felicitated him ' on so auspicious and glorious an event ! ' " The matter was brought before the whole body of Jurats, at the Meeting of the States, on the 3rd Sept. 1834, by the Solicitor General Dupre, who is reported to have said :—" He had been credibly informed, that several of the public Journals had published a serious charge against the justice, honour and dignity of the Royal Court, wherein it was openly stated, that the Magistrates had pre-

frame the j
by a respo
full Cour
Jurat sub
against
time
the deliber
Jurat
accord
acator
cular
pret
wh
Re
R

Judged the case between his Excellency and Colonel Le Breton. Seeing the Emperor felt it his duty as law officer of the Court to mention it, and if any one of them fact, so gravely charged, he pledged himself to justice immediately." No one having answered however, an action was dropped. Edw. Nicolle against the publisher of Le Breton recover compensation in damages for an alleged Bailiff, deciding the matter, on the ground that a party to this iniquitous judgment. The following dated June 15, 1835: "On the calling of the cause, ant's plea as set forth in the Act of the Court, ant recused the judgment of Sir John De Veulle, Esq., Colonel of St. Helier's Battalion of the 4th Regiment, the 20th of July, 1834, when Philip de Carteret, Jurat Justicier and Lieut. Bailiff, came on the bench in judgment in his pocket, already written and revised, said cause, although the said cause was not yet before Court, or even begun, the public prosecutor not having been his representation: that the said Mr. De Carteret had not should commence that day, or be called before him, as he was not a Judge of the day! That when the representation was made before the full Court, so as to conceal what was prepared for the eyes of the public, Charles Le Maistre, Esq., proposed contrary to the invariable rule, that the Court should retire to private, on the pretext of deliberating; to this the said Sir John De Veulle acquiesced and put it to the votes. That the Court did, in effect, retire, and there the said Sir John De Veulle authorized and sanctioned the production of a person, a stranger to the Court, which was the production of the example, in gathering the opinions of the said Sir John De Veulle, in consequence of the political opinions of the said touching the rolls of the Court.—2ndly. In consequence of the enmity between the said Sir John De Veulle and the said Sir John De Veulle, manifested on several occasions by the said Sir John De Veulle, in consequence of the political opinions of the said defendant, and of articles inserted in his Journal, relative to

the administrative conduct of the said Sir John De Veulle." This bold challenge to prove the facts was not accepted, for Judge Nicolle did not think proper to prosecute the suit, probably because he wished to save the honour of the bench from the exposé which threatened it, or else because he was disgusted at the manoeuvre which was adopted at the onset, to get the exception filed, and to paralyze him in seeking redress. The following extract from the *News* will show how this was managed :—" Now, in order to explain the manoeuvre by which justice was paralyzed, to the prejudice of Judge Nicolle, it is necessary to premise, that the day before the cause was heard, a little bird had whispered about that Mr. Le Leivre intended to recuse the Bailiff—in other words to challenge him. The Court, for the day, was composed of Messrs. Bertram and Bisson, and the bird whispered that possibly they might not agree in their opinions, on sending the said recusation to proof. It also came to pass, that Judge D'Avranche, (Marett) by the *purest accident imaginable*, happened to be on the bench, as a spectator, when the cause was called.

"Sure enough the Bailiff was recused, and therefore it became necessary for somebody to preside the Court in his place, and as Mr. D'Avranche, the senior Magistrate, was present, he took upon himself that office, and gathered the opinions. Judge Bisson objected to Mr. D'Avranche's presiding, on the ground that he had not been delegated by the Bailiff, [as the Law required in cases where the Chief Magistrate was concerned] consequently, gave no opinion on the cause, as he considered the Court was illegally constituted ! Judge Bertram, of course thought differently." Hence the following judgment was given.

'And after that the parties have been heard in all their reasons and allegations, by means of their Advocates on the said recusation, Philip Marett, Esq., Jurat Justicier, the senior Judge on the bench has gathered the opinions of the other Jurats Justiciers on the bench, George Bertram, Esq., was of opinion to put the said recusation to proof, and Edward Leonard Bisson, Esq., was of opinion that the said Philip Marett, Esq., could not preside the Court unless authorised by Sir John De Veulle, Knt., Bailiff, and the said Mr. Marett having coincided with the opinion of the said Mr. Bertram, the Court ordered that those who may have any knowledge of the facts enumerated in the said recusation shall be convened, from which sentence the plaintiff was allowed to appeal *en fin de cause*.

CHAS. DE ST. CROIX, Commis au Greffe.'

Swearing affidavits abroad.—The Act 6 Geo. 4, c. 87, s. 20, confines the authority of swearing affidavits to every Consul

General or Consul appointed by his Majesty at any foreign part or place ; and it was once held by the English Common law courts, that even to those authorities, the power was limited to commercial transactions. This doctrine however relaxed, and within these few years, affidavits sworn before a Consul General or Consul have been received as evidence in all courts of law and equity in England ; but in 1834, the Vice Chancellor refused to permit an affidavit to be read, which had been sworn before the *Consular Registrar*, as it did not come within the provisions of the Act of Parliament.

Tra, how imported.—It shall be lawful to import any tea into the islands of Guernsey, Jersey, Alderney, or Sark, from the Cape of Good Hope, and places eastward of the same, to the Straits of Magellan, or from the United Kingdom, and not from any other place, in such and the like manner, as if the same were set forth in an Act passed in the present session of Parliament to regulate the trade of the British Possessions abroad. 3 and 4 Wm. 4, c. 101.

Term Time.—One of the barbarous anomalies of our Jersey laws, is, that a creditor cannot sue a debtor unless in Term Time, provided the debtor be a landed proprietor, even to the amount of one quarter, and provided he has not given a note of hand or other negotiable instrument for the debt ! We happen to be acquainted with a glaring instance of this monstrous custom. An English gentleman has a claim on a Jerseyman for upwards of £90, but though the claim is incontrovertible, he cannot sue the debtor until April next, because the latter is forsooth, a landed proprietor : in the mean time the debtor may die, or run away, or become a bankrupt, in either of these cases, we believe the law provides no remedy for the creditor. Is it not astonishing that laws such as this should be allowed to exist so long under the noses of our reforming legislature ?—[*Jersey Times*]. Arrests cannot be confirmed out of Term Time excepting for notes of hand, &c.

Theatricals are licenced by the Bailiff ; no charge is made.

Tithe.—All persons are forbidden to take or carry away their produce from the place where the Corn shall have grown, before having delivered the Tithe to whomsoever it belongs, on pain of 10 livres penalty, and to pay to him who has the right, three livres for each Vergee, and five livres for each Vergee, which owes the Tithe and *compart*.—*Code*, 1771. In *Mallet v. Bertram*, 1838, the Court decided, that the Rector was not bound to take his Tithe in kind, without notice, if he had been accustomed to take it in money.

Title, see Appellation.—In Guernsey the Jurats, Procureur, Comptroller, Greffier and Advocates, are called Esq., by usurpation of the Court, in 1764.

Tobacco for the use of the Army, by a T. O. 14th, April, 1828, and for the use of the Navy, by 3 and 4 Wm. 4, c. 52, s. 99, is not allowed to be landed in the islands of Jersey, Guernsey, Sark or Man.

Trade of the British Possessions Abroad, Act to regulate.—3 and 4 Wm. 4, c. 59. And be it further enacted, That the Master of every Ship arriving in any of the British Possessions in America, or the Islands of Guernsey, Jersey, Alderney, or Sark, whether laden or in ballast, shall come directly, and before bulk be broken, to the Custom House for the port or district where he arrives,—and there make a report in writing to the collector or controller, or other proper officer, of the arrival and voyage of such ship, stating her name, country and tonnage—and if British, the port of registry,—the name and country of the Master,—the country of the Owners,—the number of the crew, and how many are of the country of such ship,—and whether she be laden or in ballast, and if laden the marks, numbers, and contents of every package and parcel of goods on board, and where the same was laden, and where and to whom consigned,—and where any and what goods, if any, had been unladen during the voyage,—as far as any of such particulars can be known to him; and the Master shall further answer all such questions concerning the ship and the cargo and the crew and the voyage, as shall be demanded of him by such officer; and if any goods be unladen from any ship before such report be made, or if the Master fail to make such report, or make an untrue report, or do not truly answer the questions demanded of him, he shall forfeit the sum of one hundred pounds, and if any goods be not reported, such goods shall be forfeited.

Transfer of ships or shares of ships.—By C. G. Dec. 18, 1835, each party transferring will be required either to do so by a separate conveyance, or where the owners of shares, join in one conveyance they will be required to state what share or shares each conveys. And in the granting part after the customary words, “grant, bargain, sell, assign, and set over it,” the words, “in the proportions above specified,” shall likewise be inserted.

Transportation.—Convicts, such as thieves, footpads, house-breakers and midnight robbers, sentenced to three, five or seven years’ banishment, are usually transported to Southampton, Weymouth, or Plymouth, and there set at liberty! Those

who are banished for *life*, are transported to New South Wales. There are only three instances of the latter on record. It is questionable, if the Courts of Jersey and Guernsey have any legal right to transport to any place whatever, beyond the seas; seeing that there is no law which authorizes them to do so, and that their jurisdictions are limited to their respective bailiwicks.

Transport de Justice, or removal of the Court to the Spot, which sometimes takes place when there is a litigation respecting the division and rights of property. The Jurats hear the allegations and objections of the parties, and the evidence that might be brought forward—they also examine the premises, after which they repair to the Court house. The following is the oath which the witnesses take: "You promise and swear by the faith and oath that you owe to God, that well and faithfully you will state as well what you shall know for certain, as of that which you shall believe in your conscience, after consideration of the places and of the evidences of the parties relative to an Examination on the Spot, the difference for which a view has been appointed, according to the Act of the Court, and this you shall do without any favour, hatred or partiality, as you would wish to answer before God, and in discharge of your conscience." The case of *Graut v. Dixon*, will explain this subject. The action arose out of a claim made by the plaintiff to a right of road and land in the corner of a field belonging to defendant, adjoining to plaintiff's property. It appeared that the gates and stone posts of the avenue leading to defendant's house had been knocked down, and that when he was about to replace them, and to build walls leading therefrom on both sides, the plaintiff claimed a right of road, and interjected the *clameur de haro*, which is the serio-comic preliminary for bringing questions of this nature before Justice, or rather for *Transporting Justice* to the place, so that they may decide on the spot. After the Court had been formed, the Attorney-General, for plaintiff opened the case. Several witnesses were examined, and the contracts of the respective parties produced. A surveyor, on behalf of the plaintiff, said that many years before, he measured a distance, which he pointed out, exceeding sixty feet of the said field, as part of the property of Mr. Graut, but on being cross examined by Advocate Godfray, he admitted that it might *perhaps* be only ten feet. He could produce no plan of the ground, nor any confirmation of his statement. Other witnesses spoke to there having been a road there originally, before the properties were divided, but none of them could define exactly its situation, nor recollect

that it was ever used. On examining the skins, it appeared that the plaintiff's contract represented his field as *bordering* on the avenue, which lead to defendant's house, whilst defendant's contract specified the *right* of avenue. It was alleged for defendant that the gates and stoneposts had been erected 20 years ago by the late owner, who placed rails to prevent all access from plaintiff's field, and had ever since been considered the enclosure of, and belonging to, the property; and it was only since they had been knocked down that the plaintiff claimed a right within them, upon the pretext that the old gates which formerly stood in the avenue, were lower down and nearer the house. The Court, after hearing the parties and their witnesses, adjudged the defendant to the penalty of £15 and the costs, which were £29 odd. They gave the plaintiff a right of road across the avenue to his field, although he had access thereto from the public road, but did not determine *how far* down the avenue that right extended, nor in whom the *property of the soil* was vested. In fact they did not decide the question betwixt the litigants, but left the matter just as it was before.

Treason. Coining, counterfeiting money, and laying violent hands on the Bailiff or Jurats, whilst in the discharge of the duties of their offices, are reserved both in Jersey and Guernsey for the cognizance of the Queen in Council.

Trésor.—There is in every Parish a fund called *le Trésor de l'Eglise*, i. e. the Treasure of the Church, consisting of several quarters of Wheat-Rents, given anciently by pious persons for the use of those sacred fabrics. But an ill custom has prevailed, to make this fund (so far as it will go) answer all the calls of public service, even the most secular and foreign to religion. [Falle.]

Trial, how managed, to secure a judgment.—The following exposé is taken from the *Patriot*, May 12, 1835: "The regular turns of the Magistrates for Thursday fell to Messrs. Le Maistre and Bisson, but this was not convenient. Early in the morning Messrs. Marett and Bertram were in Court. Mr. Le Maistre also came; and after having been spoken to by Mr. Marett, he asked the Bailiff leave to retire, as he found himself unwell, and *proposed that Mr. Marett should take his seat*. Mr. Bertram said that he assisted for Mr. Le Quesne! The Court was therefore composed of those two Magistrates, strong partizans of defendant, and invincible opponents of the plaintiff, to hear an election cause for the Constableness of St. Martin's. The summons of Mr. Godfray to Mr. Messervy was called. Plaintiff insisted that the one

served him should be called ; the Court found it faulty, annulled it, and refused appeal ! The depositions were concluded, on which defendant demanded that they should proceed to the merits of the case. Plaintiff objected, as his Counsel, Advocate Le Conteur, was absent, in consequence of the death of a relation, and appealed to the members of the bar as regarded the custom of the Court. The Jurats decided, nevertheless, that the matter should be proceeded with. Plaintiff's Advocate protested that it was contrary to the usage of the Court, and that he himself knew nothing of the merits of the case whatever, and begged that the pleadings might be deferred. The Court ruled otherwise, and gave judgment *instanter* for defendant with costs." See *Justiciers or Jurats, packing of.*

Trial, manœuvres in.—The case of Vautier and Syvret *v.* the *Procureur* of Charles Vautier, will illustrate this subject. It was an appeal interjected by defendant, from the judgment of the inferior Court, composed of the Bailiff and two Jurats, adjudging him to the payment £25 5s. sterling, as the alleged share of Charles Vautier's liability for certain bills of exchange, which they had by a written agreement "jointly and solidarily" guaranteed to pay on behalf of P. Vautier, whose property had subsequently been adjudicated by a *decret*. Defendant objected to the payment on the plea, that the Plaintiffs, (holders of the bills) having omitted to cause them to be inserted in the schedule under that *decret*, had excluded him from his remedy against the estate, and thereby barred their right of recovery. The cause was brought on for hearing on the 24th Oct. 1838, not by appellant, but by the plaintiffs, during his temporary absence from the island, and before a tribunal, composed of the Bailiff and only six Jurats, including the two who had decided the cause in the first instance. Defendant's Counsel objected to the competency of the court, and quoted the law and numerous precedents to show, that not less than seven Magistrates could form a quorum, unless the others were recused, which was not the case in that instance. The Bailiff, who as president, ought to have declared the Court incompetent, took the opinion of the Attorney Général, who maintained the law on the subject: he nevertheless then consulted the Bench, who, strange as it might appear, overruled both the law and custom, as also the opinion of the Crown Officer, and decided, that they were competent; but what is still more strange, the very same Jurats under similar circumstances, in the case of Blanchard *v.* Laing, on the 17th April, 1839, held that they were incompetent. [See *Quorum.*] Defendant's Counsel declared, that not having been engaged in

the cause in the first instance, he was not sufficiently acquainted with its merits to undertake the defence in the absence of his client, and therefore moved the Court for a delay of three weeks, as was usual in such cases. The motion was refused. The case was then gone into, and the judgment of the inferior Court was affirmed. On the 30th Nov. following, execution issued, by an Act of Prison against the *Procureur*, (not the debtor), in which the officer of the Court was authorized, in default of payment, to seize *his person* and commit him to prison. On the Procureur's return to Jersey, the execution was levied, and he was taken into custody by the Deputy Viscount, who conducted him to the Goal. But here it was discovered, that the action had been wrongfully instituted, it being against the *Procureur*, instead of his constituent, which shows the slovenly manner in which legal matters are managed. The fact having been pointed out, the officer took upon himself to liberate the arrest, giving his record of the same, upon which it might be supposed that the process had been spent : but no, they then took another course. The record of the officer was returned into Court, the 6th of April, when a motion was made, *ex-parte*, that the Dep. Viscount should be authorized to write to the said Charles Vautier, who was absent from the island, requiring *him* to satisfy the judgment, on pain that his *property* should be adjudged renounced and passed by a *Decret*. The motion was granted, and an act drawn up, setting forth that the officer had applied to the Procureur for payment, but omitted to state that he had *seized his person* in execution of the judgment, pursuant to the same, and had subsequently liberated him. Thus we see, an action instituted against the Procureur, instead of his constituent, a judgment recovered and execution levied against *his person*, to satisfy a debt for which he was in no way responsible—the arrest afterwards liberated, and measures taken against the property of the *constituent*, to make him a bankrupt, although no action had been instituted, or judgment recovered against him ! Who will say after this, that the Jersey Court is a proper tribunal to have the disposal of the rights, liberties and property of 40,000 persons ?

Trusts.—It appears, that no *real* property can, strictly speaking, be placed in trust, either in Jersey, or Guernsey ; hence the usual course is, to make an absolute transfer to the party, as if it were a bona fide sale, and take a bond for the value, and a private agreement declaring the purposes for which the transfer has been made. There are about 35 dissenters' chapels in Jersey, held either in this way, or by some other scheme, which cost about £15,000. Now all these

chapels are viewed by the law as being the sole property of the *individuals* whose names are in the contracts, or title deeds ; and whose heirs and assigns are liable for the rents or debts that may be owing on them ; consequently they are subject to all the casualties and mutations of private property, which may be set forth in a few words. If a trustee dies, the property vested in him must descend to his heirs, excepting it be so charged with debt, that the latter renounces to the succession, in which case it goes to the Tenant under a *decret*. If a trustee dies without heirs in a decret line, it reverts to the Lord of the Manor for a year and a day, and if he voluntarily expatriates himself for 7 years, without causing his whereabouts to be known, or without appointing a procureur, or an administrator being elected to him ; or is banished from the Island, for that period, he then becomes dead in law, or if he commits self murder, in all these cases the property reverts to the Lord of the Manor, and in default thereof to the Crown, absolutely and for ever.

Tumultuous Meetings.—The following is a translation of the Act of the States, passed on the 16th Feb., 1797, and which received the Royal Assent on the 27th April following :—

Article 1.—All persons are prohibited from gathering together, or assembling tumultuously, to the number of twelve or more, with a view or under pretext, of considering, declaring, or representing whether verbally or in writing, some pretended grievance on pain that such mob be declared illegal. All persons are equally prohibited from publishing, announcing or declaring, either by notice posted up or advertisements published, the assembling or gathering of persons for or under pretext of considering, or representing a pretended grievance, under the penalty of two hundred livers, against each offender, without, however, prohibiting, preventing, or restraining in any manner, the convocation, holding, and functions of public assemblies, authorised by law and custom ; the right is also reserved to all persons to represent, in a suitable manner, to the constituted authorities, the subjects that are of the competence of the said authorities respectively.

Art. 2.—If any Constable or Centenier is informed of a mob or an illicit assembly of persons in his parish, he is authorized and directed forthwith to repair thither, and loudly to order, in the King's name, those who shall be so assembled or gathered together, instantly to disperse and retire peaceably home, to their lawful occupations ; and if half an hour after such order given, six persons or more remain gathered together, the Police Officer in that case is hereby authorized and directed

to seize the refractory individuals, and present them in Court, and to this end, to procure the assistance not only of police officers, but of all other persons whom in case of need he may call to his assistance ; which persons shall be bound to afford the said officer all the assistance in their power, under pain of such fine and imprisonment as the case may be thought to deserve ; and each of those who shall be punished by banishment, which shall not exceed the term of five years.

Art. 3.—If a police officer, or any other person acting under his orders, is opposed by force in the execution of the duties prescribed in the foregoing article either in going to the spot where such illicit mob or assembly was held, or in the execution of the functions on the spot itself where the crowd was assembled, or in the act of seizing, or after having seized, the refractory individuals, he or other persons acting under his directions, or who should have concurred or assisted therein, shall be punished by a banishment not exceeding 7 years, or by a more serious punishment in the event that such opposition were accompanied by ill treatment, or the wounding of the said police officer, or other person acting under his orders, according to the nature of the crime.

Art. 4.—If any damage is done to the house, goods, or property of any individual, by an illegal assembly or mob, or by any one of them, such damage, whatever it may be, that shall have taken place, shall be repaired at the expense of the parish wherein such damage shall have taken place, which expence shall be taken out of the parish rate, the parish being indemnified on the goods and chattels of the delinquents.

Art. 5.—The fines imposed by these regulations, are applicable one third to the King, one third to the General Hospital, and one third to the poor of the parish, where the contravention shall have been committed.

(Signed)

JOHN DE VEULLE, Greffier.

Usury.—By the old Norman Laws, an usurer not only could not recover a claim founded in usury, but forfeited all his goods and chattels to the King, or the feudal Lord. By the Laws of Jersey also, usury is prohibited. In *Vicery v. Lempriere*, (1830) the Plaintiff actioned Defendant for payment of a promissory note for £22 4s. 6d. which had been renewed from time to time, for about 2 years, the original sum having been £10, and the remainder for interest at 30 per cent, during that period. The Court found for defendant and directed plaintiff to pay costs. This decision is just the reverse of the English practice as the following case will show. If a promissory note be given for repayment of a sum lent with usurious interest, and

the note when due be taken up and another substituted for it, the offence of usury is not thereby committed, nor is the penalty incurred until the latter note be paid. [Maddock v. Hammett, 7. T. R. 194.]

Verdict.—Some of the most inconsistent verdicts imaginable are upon record. Take the following for example. In 1832, the Coroner's Jury returned the following verdict :—"That the death of William Coady was accidental, by having had his hand crushed between a wall and a wheel-barrow which he was wheeling, caused from a shock against the said barrow by a cart driven by Ph. Deslandes, *without any malice or premeditation* on his part, but that it appears, that the said Deslandes conducted his cart with *great negligence, refusing even to stop when requested by the said Coady before the accident*, and also after to give him the assistance which he needed." In consequence of this verdict the prisoner was liberated on giving bail. In the Crown v. Vibert, Laffolet and others, 1835, the following precedent was cited :—In a criminal prosecution against three men accused of theft, the Jury were divided in opinion : the Lieut. Bailiff De Carteret received the individual declaration of the members, and rendered a verdict of "*Not Guilty*." The Foreman of the Jury (Mr. De La Garde) observed that this was a mistake, for the Jury declared the prisoners "*Guilty*." Mr. De Carteret re-examined the paper containing the declaration of those gentlemen, and was accordingly about to alter the verdict, but the Court decided that the declaration of "*Not Guilty*" having been made public, the prisoners acquired the benefit thereof, and they were consequently discharged.

Verdict, influencing of.—In the case of Caillot, accused of the wilful murder of Mary Jane Williams, in 1836, it was alleged that the Bailiff De Veulle, in delivering his charge to the Jury, exercised an undue influence against the prisoner, by stating that, "*if he formed one of the Jury he should not hesitate for a moment to declare that the prisoner was guilty of the whole accusation*." The prisoner was consequently convicted, there being twenty against four, whereas had there been nineteen against five, he would have been acquitted. In consequence of this, a petition was forwarded to the Privy Council, setting forth the fact, which was also certified in writing by the prisoner's Advocate, and corroborated by an affidavit from one of the Jury, on which his Majesty was pleased to commute the sentence to transportation for life to New South Wales.

Vinegar.—By C. O. June, 3, 1834. Vinegar the produce of Jersey and Guernsey, is, on importation, allowed to be shipped

direct from the warehouses free of duty, for the stores of vessels outward bound, in the same manner as other bonded goods are now permitted to be exported for that purpose.

Vingtenier is a police officer, who presides over a District or Vingtaine, into which each parish is divided, and is assistant to the Constable and Centeniers. The following is the oath he takes :—You swear and promise by the Faith and Oath that you owe to God, that well and faithfully you will execute the office of Vingtenier of the Vingtaine of ———, in the Parish of ———, that you shall make all lawful summons and records, and assist the Constable or Centeniers when you shall be required, and perform all other duties which appertain to the said office.

Viscount, his duty, in representing an absent party.—“ It is ordered that henceforth, as soon the Viscount shall be made party for the absent person, that within the next ensuing Court after he shall have been constituted a party as aforesaid, he shall answer, without having or taking any delay or prolongation, or default, more than the party would have had if he were present, unless it were that he, or they, for whom he would be constituted party, should have leisurely gone out of the Country anterior to their said summoning, for then the said Viscount might take one default, and one delay only ; and henceforth, those who fail in their causes shall be condemned to the expences of the adverse party, and to relieve them of all costs, charges, and interest, according to the award of the Justice, for whatsoever cause it may be, as well real as personal, or of whatsoever nature and condition it may be, for and to the end, that in future time no one should undertake or maintain any law-suit against another unless he feel the cause to be good, just, and loyal ; and henceforth all summonses shall be in causes, and shall make full mention of the nature of the cause, and shall be dated and signed by him who shall issue them, to the end that he may be responsible if by his negligence any fault is found therein, and at the peril of the party. [Ordinance of Queen Elizabeth, 16th July, 1562. *omitted* to be registered on the Rolls, in order that it might not have force.] See *Records, omission in.*

Visitors of the Roads.—[La Visite des Chemins.] The following is the oath they take :—You swear and promise by the faith and oath you that you owe to God that you will conduct the Justice by the Queen's Roads, Lanes and public ways, where you believe there are any impediments or encroachments, which impediments and encroachments you shall declare

without any favour or partiality, as you would wish to answer before God to the acquittal and discharge of your conscience.

Vraic, collecting of.—The right of the Royal Court to fix the time for collecting the Vraic was fully confirmed by the Royal Commissioners Gardiner and Hussey in 1607. "We doe therefore order, That the saide Bayliffe and Justices only, being in our opinions men of the best understanding and experience to deal in a matter of that nature, which soe much concerneth the common good, shall, from henceforth, as formerly *they have done yearly*, and at all times needful make and sett downe all orders whatsoever, they finde to be moste convenient both for the places where, the times and seasons, when the saide vracke shall perform the same. And that it shall not be lawfull for any particular Lord, or for any other persons, upon his fee, or fees, to grante any licence, or sette downe any course concerninge the same, to the impeachinge of this our Order in any wise." The vraic is allowed to be gathered by an Order of the Royal Court, called *l'abandon des Vraics*, formerly for three spring tides early in the spring, but now only for two spring tides. The Summer vraic is allowed but for only one week. The time is fixed according to the voices of the majority of the Constables, who make a report to the Court of the sense of their parochial assemblies. The decision of the Court is then proclaimed to the people by the proper officer for that purpose.—[Durell.]

Wards in Chancery.—The privileges of our exempt jurisdictions offer peculiar advantages for Wards in Chancery, especially those who seek the altar of Hymen. Take the following case for example: A rich Ward in Chancery eloped from Ramsgate in 1838, and fled "upon the wings of love," pursued by her guardian "on the wings of vengeance." The happy couple eluded the pursuit, by taking a Cowes pilot boat, which landed them at Alderney, attended by another lady and gentleman, where they were married the following day. There is it seems no difficulty respecting the licence, as the worthy Minister keeps a batch of blank forms, issued by the Surrogate of Guernsey, which may be had at a moment's notice; parties however should be prepared with a ring, for on the above occasion, they were obliged to borrow one, as there was not a ring to be purchased in the Island. They left Alderney the following day for Weymouth.

Warrant from the Admiralty.—In the case of the Swedish brig *Victory* which on her passage from Gottenburgh to Guernsey, had run foul of and damaged a vessel at anchor in Dover road, belonging to the Irish Shipping Company, an Ad-

miralty Warrant was transmitted to the Governor of Guernsey, in 1834, and by him referred to the Court, for execution, to seize the said brig in Guernsey harbour. The warrant was addressed to all bailiffs and other officers whom it might concern, and they were directed to affix the warrant against the mainmast and detain the vessel, until they received further orders from the Admiralty Court. Application having been made to the Guernsey Court to allow one of its officers to execute the warrant, or if they refused this, to authorize one of the Constables to accompany the party who held the warrant, whilst he did it himself, extracts were read from several Orders in Council with a view of showing that the Court had on other occasions, been requested to aid and assist in enforcing orders issued by the Admiralty Court. A long and desultory conversation ensued, the object of which was to ascertain how far the Guernsey Court had or had not received orders to enforce Admiralty Warrants. The Advocate's indexes or notes of decisions were had recourse to, from which it appeared, that orders from the Admiralty Court had at various times during the last two centuries and a half been enforced—that others had not been allowed to be enforced, and that so late as 1819, Sir John Scott, a Judge of the Admiralty Court had stated that the jurisdiction of that Court did not extend to these Islands. The King's Procureur maintained that the Orders in Council cited, referred to prizes, captured by privateers, in which the Admiralty had a direct interest, and that they ordered that the Court should not abstract but assist the Agents of the Admiralty. The cases in fact were public ones in which the government was interested, but the present one was purely of a private nature, it being nothing more than an action to recover the amount of the damage caused by one vessel to another on the high seas. The Court declined interfering, leaving it to the bearer of the warrant to do as he pleased, either by arresting the vessel or otherwise. The vessel sailed the following morning, before the warrant could be executed.

Water Courses, Regulations for.—Conformably to many ancient regulations and particularly to a certain judgment of His Majesty and of His Privy Council, dated the 15th day of December, 1709, it is forbidden to all persons to turn the waters which serve for the use of the Mills, contrary to their usual courses in time of scarcity, on pain of 20 livres penalty; and it is ordered on the same penalty, that all persons who in times of abundance, and when the Mills can without prejudice permit it, shall make use of part of the water for their meadows, shall be bound to put it back in its proper course: and as to the currents which do not serve for the Mills, the water

The Ecclesiastical Court will grant probate of a will of personalty, when ascertained to be testamentary according to the law of the foreign domicile, though it be invalid as an english will. *Re De Vera Maraver*, 1. Hagg. 498.

Wills, in Jersey.—The law, as to real property, has so provided for the disposal of all estates, that no man can by will, deed, or otherwise, give to any of his children a greater or less share, or proportion. By deed of gift, he may dispose of one-third, but then it must not be to one, who claims a part by succession, as it will be liable to bear its proportion of the donor's debts. The widow, after the death of her husband, enjoys for her life the profits of all she brought, and has also in dower the third of all her husband's estates; that is, the third part of whatever lands or inheritance, goods, or chattels he possessed at the time of their marriage; the third of all estates purchased by him during coverture, or coming to him by deed of gift, or descent from any kindred of a collateral line; the third of whatsoever estate was to descend to him from any ancestor in the direct line, as if that ancestor had died before the day of marriage, he would have been seized or possessed; and so the husband, while his father is yet alive, the widow shall at the father's death, have in dower, one-third of whatsoever the father was possessed, while his son, her husband lived, and was to descend to that son; but not the third of what the father purchased after his son's death; nor shall she have any part of the personalty of her husband's father surviving him. At the death of the widow, if there be no children, the dowry falls to his proper heirs. If the widow find his personal estate encumbered, she may within forty days after his decease come into open Court and publicly renounce to the third of his personalty. To avoid exposure, it is practised, that the widow has by private contract, before two Jurats, passed her third of the personal estate to the heirs, who have covenanted to let her have her paraphernalia, and acquit her of all the debts: but if the whole estate fall short of clearing them, such contract would not serve the widow to plead against the creditors, but she would still be liable; but if she renounce, then is she freed. Formerly she lost the third of all estates purchased by her husband during coverture, and the profits of such estates as had been purchased for both their lives; but notwithstanding a renunciation, she is entitled to her *præter dolem*, or provision *de la robile*; there were anciently such jewels, clothes, &c., as were at the time of her marriage reserved to her, and an inventory having, at that time, been made and signed by the husband. In the present

the widow is allowed a bed, linen, and all other household stuff, not exceeding a third. The eldest son is, after his father's death, to give evidence of the whole estate and debts wherewith it is charged, by which the youngest sons or else the daughters, are to make out bills of partage, according to their number, and out of these, the sons choose their share according to seniority. The females in the collateral succession have no share in the patrimonial estate, but they have of that purchased, together with the personalty, which always goes to the next and nearest of kin. The sister being preferred, before the son of the brother, but yet in equal degrees of proximity ; so also the males and their descendants, before the females and their descendants, and the kindred on the father's side before those of the mother in parity of degree ; the brother of the half-blood has equal share with the brother of the whole-blood, and the sister of the half-blood with that of the whole-blood, and the brother of the half-blood before the sister of the whole blood, contrary to the rule, *paterna paternis, materna maternis*. In estates which descend in a collateral line, the eldest brother has no preference before the other brothers, *unless there be a noble fief* ; and that, he may take to himself, and leave the rest to be put in partage. In the collateral descent, patrimonial estates are divided *per stirpes* ; purchased estates *per capita*. By patrimonial estates is meant, such as are called *propre* ; by purchased estates, acquet or conquest, which are taken indifferently for the same thing ; although, strictly speaking, conquest is such an estate as is purchased by a man after marriage ; acquet, such as is purchased before marriage. But were he to sell any part of his patrimonial estate, and purchase another, the one purchased is not to be accounted conquest, till all the propre is made good ; after the remainder will be acquet, or conquest ; and such estate in the hands of the father will come to be propre when it descend to the sons. Of the general law of succession, it may be added, that in collateral degrees, the nearest of kin takes place ; first the brother or sister before the nephew or niece ; this is so in estates of inheritance purchased but not patrimonial, where the representation is both of sex and degree. The partage of patrimonial estates some have thought, should be *per stirpes* and not *per capita*, as in estates of purchase. [Bowditch's Treatise, p. 49.]

Winchester's Bishop of Fellowships and Scholarships at Oxford.—On the 27th of June, 1635, three fellowships were founded by king Charles the First, at Oxford, for the benefit of students from Guernsey and Jersey. The following is the substance of the act of donation : 1.—The donation consists of

seven houses and two gardens. 2.—Also a cottage, with 123 acres of land, of which 52 are meadow, and 51 pasture, and 205 acres wood, to be enjoyed in perpetuity. 3.—The revenues are divided into equal parts between the colleges called Exeter, Jesus, and Pembroke. 4.—The fourth part of each proportion shall be appropriated to the general use of each of the colleges, and the remainder shall be applied to found three fellowships for the students of Guernsey and Jersey. 5.—After a suitable residence, the fellows shall return to their respective islands to serve God in the church, if becoming situations offer themselves. 6.—The king reserves to himself the first presentation. 7.—The mode of electing the fellows defined. 8.—The heads of the colleges shall notify to the deans and jurats of the islands every vacancy, that they may nominate a successor. Until the vacancy be filled up, the revenue of the fellowship shall belong to the college. On the 11th Dec. 1678, king Charles the Second addressed the following order to the Bailiffs, Deans, and Jurats, of the islands of Guernsey and Jersey:—Trusty and well-beloved, we greet you well. Whereas our royal father of happy memory, for the encouragement of learning in our islands of Jersey and Guernsey, did found and endow *three* fellowships in our university of Oxford, to be from time to time supplied by persons *born* in our said islands, and upon all vacancies to be nominated by you, the bailiffs, deans and jurats of the said islands, under such rules and limitations as, by his charter of foundation, it doth more at large appear. And whereas the present lord bishop of Winchester, for the aforesaid end and purpose, has lately founded and endowed *five* scholarships in the said university, to be, from time to time, in like manner, supplied by the nomination of you the bailiffs, deans, and jurats of the said islands, and under the like rules and limitations as above mentioned. For the rendering both foundations most subservient to their designed end, our will and pleasure is, that in the nomination of fellows into places which shall hereafter be vacant, shall be preferred as have been formerly nominated to their respective scholarships, and have, by their good carriage, and improvement in learning, fitted themselves for the employments which belong to fellows in their respective societies, and give hopes of their future proficiency. And we bid you farewell. Given at our Court of Whitehall, the eleventh of Dec. 1678, in the thirtieth year of our reign. By his Majesty's command.

(Signed) HENRY COVENTRY.

On the 3th of May, 1678, in the reign of Charles the Second, a charter, or indenture of foundation for the scholarship, was

granted, of which the substance is as follows : 1.—George Morley, Bishop of Winchester, founds *five* scholarships at Oxford for the islands of Guernsey and Jersey. 2.—This he does for the encouragement of virtue, education, and the advancement and propagation of true religion in the said islands, forming part of his diocese, and with the intention of animating the said scholars to qualify themselves to be advanced to the rank of fellows. 3.—The sum vested in the Dean of Christchurch, and the Chapter of Pembroke, for this purpose, is sixty eight pounds, eleven shillings and nine pence sterling. 4.—The dean and the chapter shall receive, annually, sixty pounds sterling, the remainder being otherwise disposed of. 5.—Five scholars of the college of Pembroke, natives of the isles of Guernsey and Jersey, shall each receive ten pounds sterling out of this donation ; and the said scholars shall be called, Bishop Morley's Scholars. 6.—These shall be paid to the principal of the college forty shillings per annum for the apartment of each scholar. 7.—The revenue of vacant scholarships shall be applied to the use of the said college of Pembroke. 8.—The engagement of the college to receive the five scholars is thus worded : " That they, the said master, fellows and scholars, and their successors, shall and will, from time to time, and successively, for ever admit and receive into the said college, five scholars, born in the said islands of Guernsey and Jersey, to be called Bishop Morley's Scholars." 9.—The dean bailiff, and majority of the jurats of the respective islands shall nominate the scholars. 10.—Three of the scholars shall be natives of Jersey and two of Guernsey. 11.—A scholarship shall be vacated by death, resignation, promotion, or removal ; and always after the lapse of ten years. 12.—Thirty days after a vacancy, notice shall be given to the dean, bailiff, and jurats, that they may supply it. 13.—The scholars must be duly qualified before election. 14.—The scholars are not to retain the appointment longer than ten years, nor after having obtained a living, or any other emolument ; and they are to be resident in college. 15.—They may obtain permission to travel in France. 16.—But they shall solemnly promise to return to the islands there to serve the public, as preachers, or schoolmasters, or otherwise. 17.—At the age of twenty-one, each scholar shall solemnly bind himself, before the dean and the bailiff, in a penalty of two hundred pounds, to fulfil his engagements. Such as refuse, shall not be admitted. 18.—Such as have attained the age of twenty one, and refuse to ratify their promise, shall be deprived of their appointment. —The above document or indenture is signed GEORGE WINTON.

Wines, adulteration of.—In England by the statute 12 Car. 2, c. 25, s 11, any brewing or adulteration of Wine is punishable with the forfeiture of £100, if done by the wholesale merchant, and £40, if done by the vintner or retail dealer. In Jersey and Guernsey, no penalties are attached. The Duty payable on French Wines imported into this island is £1 per hogshhead, and on all other wines (port included) £1 5s : now if a merchant import 100 pipes of Cettè wines, he pays £200 duty to the Impot, but if he *manufacture* that wine into *real* Port for the English palate, and export it to England as such, he is entitled to a draw back of £1 5s per hogshhead, and may thus defraud the revenue of ten shillings per pipe, or £50 on his hundred pipes ! Now let us apply this rule to the total quantity of *soi disant* Port exported from this island, which we are partially enabled to do by Mr. *Cyrus Redding*, who in his "History and Description of Modern Wines," gives us the imports from Oporto to the Channel Islands contrasted with the exports from the latter to London. From these tables we learn that for eight years, viz. from 1826 to 1833 inclusive, there have been imported into these islands only 210 pipes of wine from Oporto, whereas no fewer than 2129 pipes of *soi-disant* port wines have been actually exported from the Channel Islands to England in the same period ! Nay, in 1 year alone (1812) Mr. Redding assures us that only 135 pipes & 20 hogshheads were imported into the Channel Islands from Oporto, while 2,545 pipes and 162 hogshheads of *soi-disant* port were actually exported from these islands to London, by which, independant of the gross imposition on the English wine bibbers, an enormous fraud may have been committed on the island Revenue. [Jersey Times, Sept. 27, 1836.]

Wines and Spirits, declarations of, must be made at the office of the Impost within 24 hours after they have been imported, and the duties paid thereon, or carried to the account of the Importer, if he has given security to the collectors for payment of them. In the case of Mr. Whitfield, who kept a large distillery in Jersey, and who it was alleged had neglected to make the usual declarations on certain spirituous liquors which he had distilled and exported, and had thereby incurred fines to the amount of £6,090, his stock in trade and other effects were seized and sequestrated, and afterwards sold in pursuance of a judgment of the Court, obtained *ex parte*, [See *Re-opening of a case*] notwithstanding he was a landed proprietor, and though it did not appear that the information against him was founded on oath. His property was also declared *en desastre* upon the allegation, that he was a debtor to the Revenue in his

account with the Collectors, to the amount of £1,176 19s. 9^d ; for duties owing on the spirits which he had imported for the purpose of manufacturing them for exportation to the Colonies, credit not being given to him for divers sums carried to the account of other parties, and which duties were payable only on spirits *consumed* in the island, and upon the presumption that this allegation was founded in truth, and that Mr. W's. property would not cover the same, one of the collectors, Mr. E. Nicolle was first dismissed from office, by the Governor, Bailiff and Jurats, as administrators of the Impost, and 2^{ndly}, fixed as being responsible for the presumed deficiency, because he had neglected to take security from *him*, although it had not been customary to do so with any person whomsoever. An action was accordingly entered against him by order of the said administrators for payment of what *might be due* to the said revenue, on Mr. Whittfield's account, and when the cause came to a hearing, the same administrators judged the case : thus upon *presumptions*, they ruined Mr. Whittfield, and virtually banished him from the country : dismissed Mr. Nicolle from office, and then harrassed him with an action at law to recover a claim, founded on a charge which had not been established, and on a debt which had not been proved !

Wisdom of an Advocate.—In the case of Marie Renouf, a frenchwoman who was charged with having stolen a piece of cloth from Mr. Le Gros' shop, in King-St., Advocate Marette said that he had read the depositions, but could not find a single circumstance to allege in her favour ; yet nevertheless the jury unanimously acquitted her.

Wisdom of the Bench.—In the Crown v. McKay and J. Conner, two privates of the 73rd. Regt, who were tried before the Petty jury of St. Helier, in 1833, on an indictment, charging them with having broken into a *house occupied by Mr. Letto*, and stole therefrom seven pair of shoes, the jury found it difficult to come to a decision, on the ground, that it was proved that Mr. Letto did not occupy the house, but merely a shop therein, and that he occupied and lived in a house altogether detached from the premises. The foreman of the Jury, therefore requested the Court [a full bench of seven judges exclusive of the Bailiff] to enlighten them on that point. The Bailiff and Jurats, one and all shrugged their shoulders, and said nothing ! The Jury found the prisoners guilty. In Godfray v. Le Cras, an action for damages, for an alleged libel, the full Court having found the article to be a libel, defendant moved the Bench to state their reasons *why* they considered it a libel, and demanded to know, first, whether the facts alleged

were false, secondly whether they were defamatory, and thirdly, whether they had been maliciously published. The Jurats, shrugged their shoulders, on which the Bailiff said it was not usual for the Court to assign any *reasons* for their judgments. They had decided that the article *was* a libel, and that was enough. In *Le Breton v. Ennis*, the Jurat Le Quesne, when examined as to whether an invoice had been read before the full Court, of which he was a member, concerning the price and quality of certain sugars, in *Maingy v. Ennis*, when judgment was given against defendant, said "whether the document had, or had not, been read, it would not have changed his judgment, *because he gave it from the dictation of his conscience.*" Again, Hugh Godfray, Esq., was interrogated: Was deponent present in Court, when the cause of General Thornton *v. Le Breton* was pleaded before the full Bench?—Yes. Was the judgment drawn up *under the direction of the Jurats*? Here the Court interfered, to protect its honour, and by the casting vote of the Bailiff, decided, that witness should not answer the question, "*because the judgment having been delivered in private, it ought to remain so.*"

Witnesses.—Two witnesses are required to prove a fact, but in cases where a signature has not been disputed, one witness has been held sufficient, as in *Bree v. Godfray*, and *Nicholle v. Le Four* and wife. In the Attorney General *v. Joseph Grant*, 1836, actioning him to pay the sum of 50 *livres d'ordre*, (a livre d'ordre is equal to one shilling and three pence, in French currency) for having, gathered sea-weed, before the Sun rose, in contravention of the law. Though the law requires that there must be two witnesses, in every cause, to prove a fact, the Court, on the testimony of only one witness (Mr. Charles Coutanche, the officer appointed by the Parish to superintend the cutting of sea-weed), who stated that Grant had commenced gathering together the sea-weed before sun rise—condemned Grant to pay the 50 *livres d'ordre* and costs!!! In the very next cause, for a similar offence, with the same witnesses for Touzel, objected to the testimony of Coutanche, on the ground that he was the brother-in-law of Touzel. The Court decided that Coutanche could not be heard. On which the Attorney-General observed, that, without the testimony of Coutanche, he could not prove the infraction of the Law against Touzel, who was *consequently discharged*.

Witnesses, contrariety of Judgments on.—In *Le Breton v. Ennis*, defendant's counsel having moved the bench, that whilst a witness was giving his deposition, the other witnesses should withdraw, the Court granted the motion; but on the objection

of Advocate Godfray, the Court held that a member of the bar was privileged like a member of the bench to retain his seat, although a witness; but a few days afterwards in the same cause, when the Jurats Messrs. E. and W. Nicolle claimed the privilege the Court overruled it. When Adv. Godfray was examined, the Court held he was not bound to answer questions concerning matters confided to him professionally, excepting by consent of the parties, but when M. Kaye (formerly Solicitor to the Bank of England) and who had been consulted by defendant professionally concerning the case, the Court held him bound to answer any question, because he was not Advocate or Solicitor of the *Jersey* Court. They however held he was not bound to answer questions touching his conversation with defendant *since* the cause had been instituted, but when Mr. N. Westaway was examined, they overruled that decision.

Witnesses, prevarication of.—It has been often said that when a cause is sent to proof, in which the Crown Officers act as counsel for a party, that the witnesses who depose on *their* side, are not dealt with according to their demerits when they prevaricate, as those are who depose on the other side. In the case of *Arthur v. Hamon*, (1834) Adv. Godfray said, "he saw *plainly*, that a witness who deposed in favour of the party for whom the King's Procureur acted, was in a different position, whatever might be the manner in which he acquitted himself of his oath; whilst when a witness deposed against the King's Procureur's client, he was ready to send him to prison for prevarication, as was the case with the unfortunate Le Brocq, and he certainly did not deserve more than Mr. John Le Couteur, and if he (Mr. G.) was King's Procureur, he should act very differently." The Procureur claimed the protection of the Court: it was impossible for him to pass over in silence the insult that had been offered him; he demanded an explanation. Adv. Godfray repeated the words, he had no other explanation to give. The Court passed a censure on the Advocate for his unbecoming remarks. Advocate Godfray demanded an appeal which was refused. See *Procureur General de la Reine*.

Witness, subpœna of to England.—A witness may be subpœnaed from the Islands to the Courts of Westminster, and also to the Privy Council under the 2nd Will 4. but not from England to the Court of Jersey. A witness coming from abroad to England without subpœna is privileged. Tidd's Prac. 198. The protection extends to their going, staying and returning *Anon.* Loft 434. A defendant when discharged from legal custody has no privilege from arrest in returning home, *Anon.*

1 Bowl. P. C. 157. A party coming up on Habeas Corpus, is protected from seizure during his return, as well as during the coming and staying. *Rex. v. D'Laval* 1. W. Black, 415. 3 Burr, 1434.

Worship, place of.—In the case of Zion Chapel, 1830, the Trustees having shut up the building, for want of revenue to pay the interest on the advances they had made, amounting to £660, and the current expences of celebrating divine worship therein, the Pastor and two Deacons endeavoured to effect a forcible entrance, on which one of the Trustees interjected the *Clameur de Haro*; and on the action instituted against him by the said Pastor and Deacons to see the said *Clameur* set aside, the co-Trustees, were allowed to intervene, and the Court by the casting vote of the Bailiff held that the Trustees being in lawful possession of the said Chapel in virtue of an hereditary contract, discharged defendant from the action, and adjudged plaintiffs to the penalty and costs. Appeal was demanded and granted. See *Trusts*.

Writ of Error.—This is unknown to the Jersey Court. The judgment of the inferior tribunal can only be suspended by an appeal to the full bench, which must be demanded at the time of trial, and sureties entered into, to satisfy the judgment in default of prosecuting the appeal within the time allowed by law. Motion for a new trial is rarely or never allowed in the Court below, and even if granted by the Council above, and the party be referred back, for a rehearing, some manœuvre or other is usually adopted to nullify it. In the case of *re Whitfield*, their lordships granted leave for the Petitioner's case to be reheard before the Full Court, on payment of the costs of the former proceeding to the Court, or their Agent, when taxed by the Greffier. [See *re-opening of a case*.] On his making a lawful tender of the money to the Bench in open Court, they refused to receive it, alledging that the Court was not the place to receive money; and on his demand, that they would inform him who was their Agent, authorised to receive the same, they refused to name him, also to re-open the case, until the money had been *paid*, and he should produce a receipt for the same! Petitioner's counsel demanded, that the fact of his having made the tender, and of their refusal to name their agent should be mentioned in the act of the Court. The Court refused: he then moved that a day should be appointed for the re-hearing of the case, which was also refused. This was not the only manœuvre adopted on that occasion, the Bill of Costs was actually taxed without defendant's being privy thereto, so that he was prevented having any opportunity to raise objections either to the items or the charges.

INDEX.

	Page		Page
Absentees	65	Privy Council	83
Accessories	65	in forma pauperis	85
Accusation,mitigating of	66	copies of proceedings	85
Acquittal	67	regulations for hearing	85
Actions	67	Appellation	86
Acts of Court	67	Appraisers	86
suspension of	68	Apprentices	86
States	68	Approbation of age ..	86
suspension of	68	Arpenteurs or Land Sur-	
Acts of Parliament,when		veyors	87
they extend abroad..	68	Arraignment	87
how extended, when		Arrest	87
Islands not included	69	Assault	87
how exemplified ...	69	Assessment to the P. rate	87
registration not essen-		Attachment	88
tial	70	Attornies	89
how published	72	Avocat General de la	
when operation com-		Reine	89
mences	73	Avocat Promoteur ..	89
repeal of	73	Auctioneers	89
Adjunction	75	Autorise du P. G. de la	
Administrator	75	Reine	89
Administration,letters of	75	Bailli or Bailiff	89
Admiralty causes	75	his authority	90
Adultery	76	precedency	90
Advocates	76	Bankrupt laws of Eug-	
Affidavits	77	land, who subject o	91
Affirmation	77	what persons deer ed	
Agreements	78	traders	93
Alehouses	78	act of Bankruptcy ..	94
Aliens	79	Petitioning creditor .	95
their disabilities ...	79	Commission	96
in France	80	relation back of Com.	96
Amende honorable ..	81	Personal estate	100
Anchorage	81	Real estate	101
Apothecaries, Chemists		Proof of Debts ...	101
and Druggists ...	81	choice of assignees ..	102
Appeals to the full Court	82	Surrender	102

	Page		Page
Certificate	102	Clearance	126
Ban. laws of Guernsey	103	Clerks and Sextons ..	126
Jersey	103	Collectors of alms	126
division of estate ..	103	Colonial or Foreign Law,	127
Baptismal Registers ..	107	how proved	127
Bastards	108	transactions, do.	127
Bench and the Bar ..	35	Conclusions of C. officer	127
Benefit Societies	108	Constable	127
Bigamy	109	his domicile	129
Bills of Exchange	110	his responsibility ..	129
not due, arrest for ..	111	his report	129
Bottled spirits	112	Coals	130
Brandy, Geneva and		Commissioners	130
other spirits	112	Constitutions of K. John	32
British Fisheries ..	112	Contempt	130
British Possession ..	112	Contracts, passing of ..	130
trade of, how regulated	112	Conveying property ..	132
in America trade to..	112	Convicts,	132
B. Ship, how navigated	113	Corn and Flour	132
Burglary	113	Coroner	133
Casting vote	113	Costs	133
Cattle	113	Court-house	133
Cause of Action	113	Cour d'Herit., opening	133
Causes, days for hear-	113	Court, no power to make	
ing of	113	Laws	134
hearing of	114	Copy right	134
passing of	114	Creditors, ranking of ..	134
Caveat	115	Crimes, committed out	
Centeniers	115	of the realm	135
Certificate	116	High seas	135
of produce	116	Criminal Law	135
of production	117	Criminals, escape of ..	135
Certiorari	117	Crown Officers, recom-	
Cession general	118	mending of	136
Certificate of	122	right to be at the States	136
Chace, regulations ..	124	matters concerning the	137
Chancellor's Commis. ..	125	Curator	137
China and India goods.	125	Custom	138
Choses in action	125	Customs' Acts	138
Church Treasure	125	Cutting and maiming ..	139
Church-wardens	125	Debt, arrest for	139
Citations	125	when and by whom	
Clameur de Haro	125	executed	141
Clandestine acts	126	arrest for in Guernsey.	141

	Page
to the Crown	143
how proved for use	
abroad	143
Declaration	144
Decret, law of	146
Deeds, registration of..	154
Default, après contesta- tion	154
Delinquencies in Militia	
Duties	154
Denizens	154
Denunciator	155
Depositions, taking of..	155
Deputy of the States..	156
Deputy Viscount	156
responsibility	156
Desastre, declaration of	157
Descent	158
Devise	158
Disallowed	158
Disqualified Electors..	159
Dissent	159
Disturbers of the peace	159
Divorce	159
Dogs	160
Doleances	161
Dowry	161
Dramatic productions..	161
Drawbacks	161
Duelling	161
Duties and Taxes	162
Ecclesiastical Court ..	51
members of	52
canons & constitutions	52
Elections	163
law of	163
Electors, qualification of	165
Electors, for minors ..	165
Embezzlement	165
Entails	165
Ether	166
Evidence, how taken ..	166
witnesses not bound to appear	166

	Page
purity of	166
relevancy of	167
abroad	168
as to Colonial transac..	168
Exchequer process	170
Executions	170
Executive and Judicial authority	17
Exoine	170
Expatriable	171
Expences of litigation..	171
prosecution	171
False colours	171
Fast days	171
Fees, Ecclesiastical ..	172
Feudal Tenures	172
Fines, remittal of	173
Fixtures	173
Forcible entry	173
Foreigners	173
allowed to sojourn ..	174
Foreign attachment ..	174
Forgery	175
Forma pauperis	176
France, escape of deb. to	176
non liability for debt in	176
Franking privilege	176
Game	176
Gas Lights ..	176
Goods	177
obtaining of, fraudu- lently	177
Governor	178
his jurisdiction	179
his lieutenant	180
power and privileges.	181
induction into office ..	181
oath and declaration ..	181
absence or death ..	182
presence in Court	182
interdicted from nomi- nating Crown officers.	182
Grande Enquete	183
Grande V. des Chemins	183

	Page		Page
Greffier	183	Interest of money	219
Arbitre	184	not recoverable in Eng-	
Grefte office	184	land on a foreign	
Guardians	187	judgment	220
responsibility	188	Intervention	220
who disqualified for ..	189	Intestates, dis. of estate	220
Habeas Corpus, Acts of	189	in Jersey	221
writ, mode of applying		Inventory	222
for	195	Jailor	226
writs issued to Guern-		Jersey, description of..	1
sey and Jersey	197	Jews	226
Halbardiers & Pikemen	200	Judgments	226
Harbour Dues	201	forced, in violation of	
Masters	201	conscience	227
Hawkers and Pedlars.	201	particulars to be regis-	
Heifers and Cows	201	tered	227
Highways	201	debts in England, how	
Homicide	202	enforced in Jersey ..	227
Household furniture ..	203	of Colonial Courts, en-	
Hue and Cry	204	forced in England ..	230
Husband and wife ..	204	abroad, how proved in	
Hussier	205	England	232
Hypothèques et Priv...	205	Jurats, origin of	235
Impost	206	qualifications	236
authority for levying..	206	their duties	237
Impress Act	206	jurisdiction of ..	237
Imprisonment	206	precedency	238
for debt, abolition act.	207	aged	239
Incest	208	death of	239
Infanticide	208	Juries	239
Inheritance, partition of	209	Jurisdiction of Courts of	
Initiating laws	210	Westminster ..	17
Injunction, writ of	210	of the Jersey Court ..	240
Injuries to & trespasses		of English Courts	243
on real property ..	210	Justiciars, packing of	244
personal, abroad	211	Justices, itinerant ..	246
Inquests	211	Landlord and tenant ..	246
Insolvency	211	Language	246
Insolvent acts	214	Larceny	246
certificate	215	Law charges	246
Inspectors of roads ..	218	Laws	17
Insurance, life policy,		Law, finisher of	248
how vitiated	218	Leases	248
assignment of	218	Legacy duty	249

	Page		Page
Legal tender	249	Naturalization	268
Legislative power	3	form of abjuration of	
Letters, franking of ..	250	Popery	273
Letters patent	250	Navigation	274
Levies of money	250	Ne exat regnum	274
Libel	250	Newspapers	274
Licences	251	to foreign parts ..	274
Limitations of actions		Notaries Public	275
and suits	252	Notes of hand	275
Limitation, statute of, its		Notice to quit	276
applicability to Colo-		Nuisances	276
onial transactions	256	Oaths	276
Litigation	257	and affirmations	276
Loan Societies	257	refusal to administer.	276
Lotteries	258	Officers of her Majesty.	3
Lunatics	260	Officiers des Vraics ..	273
Maintenance	260	du Connetable	277
Majority, how to esti-		Officers, responsibility of	277
mate/.....	260	Offices in the Colonies..	277
Mandamus	261	Opposition to the sale of	
Manslaughter	261	property, lodging of..	278
Marriage, publishing		Oppressions, crimes and	
baans of	261	offences committed	
with French subjects		abroad..	278
out of France	261	Order in Council, refu-	
Master and seamen ..	262	sal to register	279
Militia	263	Orders, Warrants, and	
drills	263	Letters, not to be exe-	
accountrements	264	cuted without leave.	280
finer	264	until presented for re-	
orders	244	gistry	281
rate of arms	265	Ordinances	282
Vingtenier	265	Ordre Provisoire	282
regiments	266	Pardon and mitigation	
rank with the regulars	266	of punishment	282
exemption from ..	266	Parish accounts	285
Military and civil go-		Assemblies	286
vernment	2	Clerks	288
Military forces	267	Officers	288
Money orders on Post		Vestries	289
office	267	Parochial officers	289
weights and measures.	267	Parsonage houses, re-	
Mutiny & desertion act.	268	pairs of	289
Native Inhabitants ..	268	Partners	290

	Page
by joint stock	230
Passengers	290
and baggage	290
Passports	294
Patents, renewal of ..	294
Paupers, removal of ..	295
Pavements, repairs of ..	295
Pawnbrokers	295
Pension, attachment of.	295
Perimé	295
Periodical publications.	296
Perjury	296
Permit	296
Petition, right of ..	296
Pier Dues	297
Pilots	297
Pleadings	297
Pleas	298
Poor, funds of	298
Poor's rate	298
Post Office, embezzling letters	299
Powers of Attorney ..	299
Precedents	299
Prevots	299
Principaux	300
Prise de corps	300
Prisoners	300
Prison, escape from ..	300
Privileged causes	301
debts	301
Privy Council, judicial committee	301
Probate or admin. in England, its effects in Colonies	301
Procedure of the Jersey Court	39
Process, serving of	302
Procureurs du B. public	302
Procureur General ..	302
de la Reine	302
Prohibition	303
Promissory notes, how	

	Page
set aside	304
Promise, proof of	305
Proof of debts, made in England	305
writings attested abr.	306
Property of Intestates..	306
by marriage	307
in France	307
of a minor, under fo- reign appt.	307
placing in the hands of Justice	307
Propositions to States.	310
Provisional laws and Ordinances ...	310
Public accounts ..	311
Publicans	311
Publicity of S. meeting.	311
Public officers, malver- sation abroad	311
Putting off Trial ..	311
Quakers	312
Quarantine boat and anchorage dues	312
Quarter days	312
Quarters to the rate and quarters of rent ..	312
Queen's Bench ...	312
Receivers	312
their office not incom- patible with that of Constable	313
Queen's Weights ..	313
Quorum	314
Quo Warranto	314
Rape	315
Realm	317
Records, omission in ..	317
Recusation of Judges.	318
witnesses	321
Reclamat. of property ..	322
Reduit au petit depens.	323
Registrar	323
Registry office ..	323

	Page		Page
Register of orders ..	223	Segars	349
Remittance of money ..	324	Senechals of Inf. Courts	349
Remonstrance	324	Separate maintenance in	
Rents	324	France	340
value of	324	Separ. quant aux biens.	349
Rent, distraining for ..	325	Serjeants of Justice ..	351
giving for ever to ..	325	to the Queen	352
charges	325	Settlement	352
abuses of	327	Sequestra. of property.	354
Renunciation and ces-		Sexton	354
sion in Guernsey ..	330	Sham marriage ..	354
Renvoyé par incivilité		Sheep and other cattle.	355
d'ajournement ..	338	Slander	355
Re-opening a case ..	331	Smuggling ..	355
Repairs	334	Smuggled goods, con-	
Retrait Lignager ..	333	tract for payment of.	357
Revenue	45	Solicitors, Viscount, De-	
Reversionary legacy, at-		nunciators & Greffier,	
tachment of	334	not allowed to practice	357
Revocal of judgments.	335	Spirits	358
Revue de Justice ..	335	Stamped documents, gi-	
Riding on shafts	335	ven in evidence in Eng.	358
Royal Assent, treated		States	13
contumaciously ..	335	members of ..	16
Royal Court	26	States, non attendance	
members of	28	of members ..	358
Jurisdiction of ..	29	Sterling and currency.	360
different courts ..	30	Stolen goods, rec. of ..	360
terms	32	Stone, vessels laden with	360
Rules of the gaol ..	336	Stoppage in transitu ..	360
Run-away deb. to France	336	Srrangers	362
Rule of the Courts at		in Guernsey ..	362
Westmins., serving of	338	Strayed cattle	363
Sabbath, regulations for		Subordinate Officers ..	38
observance ..	339	Successions ..	363
Sacrament Sunday ..	339	Summonses	363
Saisie in Guernsey ..	340	Superfluous formalities,	
Banks	340	abolition of ..	363
Seal of the Island ..	340	Surcharge to the rate. ..	365
Seamen's Ben. Society.	342	Suspension and altera-	
Search, right of, not al-		tion of judgments af-	
lowed on shore ..	347	ter trial, and concoc-	
Seizure of goods and		tion of judgments be-	
vessel liable to forfei-		fore trial	363
ture	348	Swearing affidav. abroad	363

	Page		Page
Tea, how imported ..	370	Visitor of roads ..	379
Term Time ..	370	Vraic, collecting of ..	380
Theatricals	370	Wards in Chancery ..	380
Tithe	370	Warrant from Admiralty	380
Title ..	371	Water courses, regulat.	381
Tobacco ..	371	Wheat, exportation of..	382
Trade of British pos.		Wife and children, de-	
abroad, act to regulate	371	section of	382
Transfer of ships ..	371	Wills and codicils ..	383
Transportation ..	371	Wills, laws of France..	382
Transport de Justice ..	372	Wills, proving of ..	383
Treason ..	373	Wills, in Jersey ..	383
Tresor ..	373	Wines, adulteration of	388
Trial, how managed to		Wisdom of an Advocate	389
secure a judgment ..	373	Wisdom of the Bench.	389
manœuvres in ..	374	Winchester's Bishop of,	
Trusts ..	375	Fellowships ..	385
Tumultuous meetings ..	376	Wines, adulteration of	388
Usury ..	377	Wines and Spirits, de-	
Verdict ..	378	clarations of ..	388
influencing of ..	378	Witnesses	390
Vinegar ..	378	prevarication of ..	390
Vingtenier ..	379	Witnesses, subpoena of	392
Viscount, his duty in		Worship, place of ..	391
representing a party	379	Writ of Error	392

ERRATA.

- Page 12, line 34, instead of due attention, read due execution.
 36, — 20, instead of brother-in-law, read uncle.
 56, — 14, instead of bands, read banns.
 77, — 3, instead of thrice every year, read twice a year.
 89, — 21, instead of Good's pence, read God's pence.
 42, instead of revoke, read recall.
 113, — 16, instead of burglars sented, read burglars
 sentenced.
 150, — 1, instead of insbribed, read inscribed.
 156, — 34, instead of shall be in you, read shall in you
 be possible.
 178, — 40, instead of sincere, read sinecure.
 317, — 17, instead of possession, read profession.

181.—30. There appears to be a difference of opinion on the case of C. M.; some parties maintain that Article 1 of the law on Decrets, p. 146, which requires that certain formalities, shall be observed on making cession, applies only to those who renounce to their own property, and not to Guardians or Curators who renounce to the property of their wards, these not being assimilated to the Cessionaire excepting by article 13, as respects articles 10, 11 and 12.

[LA CHAS, PRINTER, JERSEY.





JPG LLJ JRm

The laws, customs, and privie

Stanford Law Library



3 6105 044 642 200

